

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

ARBITRATION APPEAL NO. 15 OF 2017

Malegaon Municipal Corporation Nashik .. Appellant.

Vs

M/s.Megha Enterprises .. Respondent

Mr.G.H.Keluskar, for the Appellant.

*CORAM : NARESH H. PATIL, C.J. &
N.M.JAMDAR, J.*

Date : 4 April, 2019.

P.C. :

We have heard Mr.Keluskar the learned counsel for the Appellant. Respondent though served has not chosen to appear.

2. The Appellant – the Municipal Corporation of Nashik, has challenged the order dated 17 January 2017 passed by the Principal District Judge, Nashik rejecting the application filed by the Appellant under section 34(3) of the Arbitration and Conciliation Act, 1996 ('the Act'). The learned Judge, by the impugned order, has refused to condone the delay in filing the arbitration petition.

3. The Arbitral award was passed on 10 February 2016. It was served on the Appellant on 5 May 2016. The application under the Section 34(3) of the Act was filed on 16 November 2016.

4. The application, as per the limitation period prescribed under the Act of 1996 should have been filed on or before 4 August 2016. The learned Principal District Judge has rightly held that, in view of the mandatory language of the Section 34(3), the delay could not be condoned. Mr.Keluskar, learned counsel for the Appellant has sought to explain the reasons for the delay, but since there is no power to condone the delay beyond the period stipulated under Section 34(3), no fault can be found with the impugned order and the Appeal will have to be dismissed.

5. However, one facet in the case which we must take note. The agreement was for collection of dues on or behalf of the Municipal Corporation. The arbitration clause provided that the Commissioner would be the arbitrator. Here the Commissioner has passed an award in favour of the Respondent. The challenge to the Award by the Municipal Corporation through the Commissioner stands concluded in view of the delay. The State Government could examine the position since public funds are involved.

6. The Appeal is dismissed.

7. Copy of this order along with a photocopy of the compilation of the Appeal be sent to Chief Secretary, State of Maharashtra.

N.M.JAMDAR, J.

CHIEF JUSTICE