

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.424 OF 2017
WITH
NOTICE OF MOTION NO.1313 OF 2017
IN
ARBITRATION PETITION NO.424 OF 2017**

Vijay Mehta

....Petitioner

Vs.

The Bombay Mercantile Co-op. Bank Ltd. & Ors.Respondents

Mr. Prashant J. Pandit for petitioner.

Mr. Shoaib I. Memon for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 27th MARCH 2019

P.C.:

1 Mr. Memon states that *ex-facie* the petition is time barred.
Mr. Pandit states that the 90 days will commence only after receiving the award and petitioner never received the award.

2 Mr. Pandit states that he received a copy of the award from the Arbitrator and the first time he received it was only after a demand notice was issued and received by him in March 2017 being demand notices dated 3rd March 2017 and 29th March 2017. Mr. Pandit states the the petition has been lodged on 26th April 2017. Therefore, within the 90 days prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act). Petition does not list out the chronology of dates or any evidence to indicate when petitioner received the award for the first time and on what date.

3 Petitioner, who was respondent no.3 before the Arbitrator, had taken out a notice of motion bearing no.1313 of 2017 for stay of the execution of the award. In the affidavit in reply, respondent no.1 has annexed copy of the roznama of the Arbitral Tribunal. The predecessor of this Court also called for the original records and proceedings and the original roznama is also available on record. It has to be noted that respondent no.3, who is petitioner herein, has been attending the arbitral proceedings on almost all the dates with his advocate. The roznama for last five hearings on 30th January 2010, 20th March 2010, 8th May, 2010, 5th June 2010 and 21st August 2010 reads as under :

Bank Officer and Advocate absent. Respondent No.3 present, His Advocate present. Argued in detail. Matter proceeds for argument of the Applicant Bank finally in the interest of justice. Matter adjourned for argument for Applicant Bank to 20.02.2010.

*ARBITRATOR
30th January 2010*

Applicant Bank Representative present. Respondent Representative present. Matter is adjourned for award to 08.05.2010.

*ARBITRATOR
20th March 2010*

Applicant Bank Officer and Advocate Ms. Hawa present. Respondent No.3 is present. Matter is finally argued and closed for award. Matter adjourned to 05.06.2010.

*ARBITRATOR
8th May, 2010*

Applicant Bank officer and Advocate Ms. Hawa present. Respondent No.3 present in person. Award is under preparation, hence adjourned to 21.08.2010.

*Dr. R.M. KHAN
(ARBITRATOR)*

05.06.2010

Applicant Bank officer and Advocate Ms. Hawa present. Respondent No.3 present. Award passed today and copy handed over to the Respondent No.3, proceedings are disposed off.

Dr. R.M. KHAN
(ARBITRATOR)
21.08.2010

(emphasis supplied)

4 Roznama clearly mentions that on 21st August 2010 the award was passed and copy was handed over to respondent no.3. Mr. Pandit, however, states that the roznama does not indicate any counter signature by respondent no.3 acknowledging receipt of the award. Mr. Pandit, however, does not deny the fact that respondent no.3 was present in arbitral proceedings on 21st August 2010.

5 When the Arbitrator has noted meticulously who all were present on what dates and what transpired, I cannot accept petitioner's submissions that he did not get a copy of the award on 21st August 2010. I see no reason why the Arbitrator would note that a copy of the award was handed over to respondent no.3, if he had not. The Arbitrator had to only courier it to all the parties. It is more likely a copy was handed over because respondent no.3 was attending the hearing for respondents and other respondents were not attending. It will also set a wrong precedent if one questions the integrity of the Arbitrator, particularly on a small issue like this. Moreover, nowhere in the petition it is mentioned what did petitioner

do to find out the status of the arbitral proceedings between 21st August 2010 and March 2017.

6 In the circumstances, petition having been lodged beyond the time prescribed under Section 34 of the Act, is dismissed with costs in the sum of Rs.50,000/-. Notice of motion also accordingly stands disposed.

(K.R. SHRIRAM, J.)