

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

**NOTICE OF MOTION NO.1457 OF 2016
IN
ARBITRATION PETITION (LODGING) NO.88 OF 2016**

M/s Globe Capital Market Ltd. ... Applicant

In the matter between :

M/s Globe Capital Market Ltd. ... Petitioner

Versus

M/s HRIM Finance and Securities
Private Limited ... Respondent

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Dr. Anurag Agarwal a/w Ms. Kokila Kalra for the Applicant/Petitioner.
Mr. Zain Mookhi a/w Mr. Sunil Vyas and Mr. Birrul Mohamedi I/b
Mansukhlal Hiralal & Co. for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 12 MARCH 2019

(Oral Judgement)

. This notice of motion is taken out in an arbitration petition, which is under objections *inter alia* on the ground of delay. According to the Applicant there is a delay of about 129 days in filing the present petition (the correct number of days being 144). The notice of motion seeks condonation of that delay.

2 The Applicant's case for condonation is under Section 14 of the
Limitation Act. It is not in dispute that Section 14 applies to filing of an
arbitration petition, whilst Section 5 of the Limitation Act does not. The

case of the Applicant is that it had earlier filed a challenge petition in respect of the same award before the District Judge, Patiala House Court, New Delhi. That petition was objected to by the Respondent herein on the ground of want of territorial jurisdiction of the Delhi Court. The court came to a conclusion that as per the agreement between the parties, the court lacked territorial jurisdiction to entertain and try the challenge petition. The petition was, accordingly, directed to be returned under Order VII Rule 10 of the Code of Civil Procedure (“Code”) with liberty to the Applicant to file a fresh petition in a court of competent jurisdiction. The present petition is filed in pursuance of that liberty. There is, however, as noted above, delay of 144 days in filing the petition. The Applicant's explanation for this delay is that the original papers were handed over by the court office at Delhi to the Applicant only in the month of December 2015. It is submitted that the Applicant thereafter had to approach a lawyer in Mumbai to file the petition. It is submitted that the lawyer tried to file the original petition returned by the Delhi court in this court, the Registry did not accept it, since it was not in the format required by this court. It is submitted that the papers had therefore to be sent back to Delhi for rectifying the defect, which took some time, whereafter the petition was filed. It could, however, be filed only on 20 January 2016. It is submitted that this delay, which was, at any rate, not intentional, needs to be condoned in the interest of justice.

3 Section 14 of the Limitation Act, 1963 rules on exclusion of time spent in proceeding *bona fide* in a court which lacked jurisdiction or was unable to entertain the proceeding for a like reason. Section 14 provides that in computing the period of limitation for any suit (arbitration

reference being covered by virtue of Section 43 of the Arbitration and Conciliation Act, 1996), the time during which the plaintiff (here, the Applicant) has been prosecuting with due diligence another civil proceeding (here, the challenge petition), whether in a Court of first instance or of appeal or revision, against the defendant (here, the Respondent) shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. *Explanation* to Section 14 makes certain subsidiary provisions for effecting such exclusion of time. Clause (a) of the *Explanation* provides that in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted. Thus, in the present case, the Applicant will be entitled to the benefit of exclusion of time between 24 May 2014, on which date the earlier petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act") was filed by the Applicant before the Delhi court and 17 September 2016, when that court returned the petition under Order VII Rule 10 of the Code, giving liberty to the Applicant to file appropriate proceedings before a court of competent jurisdiction; such exclusion would have to be made counting both "24 May 2014" and "17 September 2015" as dates of pendency of the earlier proceeding. If time is so excluded, the present petition is out of time by about 144 days. It is not in dispute that the arbitral award (award of the appellate tribunal) was received by the Applicant on 25 February 2014. The limitation for filing a challenge petition under Section 34 of the Act, thus, begins from that date. Taking that date as the starting date and excluding the period between 24 May 2014 and 17 September 2015 (both

days counted), the present petition suffers from a delay of 144 days, i.e. beyond the maximum permissible period of 120 days, beyond which no application for condonation can be made.

4 Learned Counsel for the Applicant submits that whilst excluding time under Section 14 of the Limitation Act, not only should the applicant be allowed to deduct the period of actual pendency of the earlier challenge petition, but also the time occupied in taking preparatory steps for instituting the proceedings. Learned Counsel submits that time taken for rectifying the petition returned under Order VII Rule 10 of the Code, to make it conform to the format of a challenge petition to be filed in this court, should be treated as time taken for such preparatory steps and ought to be excluded for the purpose of computation of the period of limitation. Learned Counsel relies on a Full Bench decision of Andhra Pradesh High Court in the case of **Thirumareddi Rajarao Vs. The State of Andhra Pradesh, represented by the District Collector Visakhapatnam**¹ in support of his submission. Learned Counsel, secondly, submits that refiling of an application, after curing defects in it, does not amount to a fresh filing for the purposes of computing the limitation period. Learned Counsel relies on the Supreme Court decision in the case of **Northern Railway Vs. Pioneer Publicity Corporation Private Limited**² in support of this submission. Learned Counsel lastly relies on a judgment of a Division Bench of our court in a case between the same parties, i.e. **HRIM Finance and Securities Pvt. Ltd Vs. Globe Capital Market Ltd**³, where a similar delay was condoned by the Division Bench. Learned Counsel implores the

1 AIR 1965 AP 388

2 (2017) 11 Supreme Court Cases 234

3 Appeal (L) No.431 of 2016, decided on 25 January 2017

court to take a similar view.

5 The Supreme Court in the case of **Simplex Infrastructure Ltd Vs. Union of India**⁴ has made it clear that a plain reading of sub-section (3) of Section 34 of the Act shows that an application for setting aside an award on any of the grounds mentioned in sub-section (2) of Section 34 could be made within three months and this period may only be extended for a further period of 30 days on sufficient cause being shown but not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that no extension can be made beyond 30 days. If, even after giving benefit of Section 14 of the Limitation Act to a party, there still is a delay beyond the permissible period of 120 days in filing the application, such application would be beyond the timeline prescribed under sub-section (3) of Section 34 of the Act read with the proviso and the delay cannot be condoned; condoning such delay would be to breach a clear statutory mandate. In the present case, as we have noted above, even if we were to exclude the entire period of pendency of the earlier challenge petition before the Delhi Court, there is still a clear delay over and above the maximum permissible period of 120 days in filing the arbitration petition under Section 34 of the Act and the petition, accordingly, cannot be entertained.

6 The judgment of Full Bench of Andhra Pradesh High court in **Thirumareddi Rajarao** (supra) does not assist the Applicant. It is not known as to which preparatory steps were involved in the prosecution of the earlier civil proceeding in that case, since the matter before the Full

4 2018 SSC OnLine SC 2681

Bench came on a reference from a Division Bench of that court on a pure question of law. The infructuous proceeding earlier filed was a revision application. The question referred to the Full Bench concerned whether only the time during the actual pendency of the infructuous revision should be excluded under Section 14(1) of the Limitation Act or whether the matter required reconsideration in view of Rule 41-A (2) of the Appellate Side Rules of that court prescribing a period of 90 days for a civil revision petition. In the course of its discussion, the Full Bench noted that the infructuous revision application filed before the High Court under Section 115 of the Code was actually pending between 23 September 1953, when the civil revision petition was filed, and 18 October 1955, when it was dismissed by the High Court. The Full Bench noted that the expression “prosecution” under Section 14 of the Limitation Act implied not only the actual period between the presentation of a proceeding and its disposal that should be allowed under the sub-section, but the time during which a party has been taking the indispensable and necessary steps preparatory for initiating the proceeding in a court. The Full Bench was of the view that even this time should be treated as time during which the applicant was prosecuting a civil proceeding. The expression “indispensable and necessary steps preparatory”, referred to by Full Bench in **Thirumareddi Rajarao**, clearly implies steps taken in a court in which the first proceeding was filed, for which benefit of exclusion of time was claimed by the applicant. It cannot imply preparatory steps taken in the chambers of an advocate for filing of the proceeding. In any event, time considered in **Thirumareddi Rajarao** case was time during which the applicant in that case was prosecuting the earlier civil proceeding. “Preparatory steps” referred to in that judgment could only be preparatory steps in connection

with that civil proceeding and not the later proceeding where the benefit of exclusion of time was claimed. The decision of **Thirumareddi Rajarao's** case, thus, even otherwise, does not come to the aid of the Applicant for excluding time taken by it for preparation of the correct format of the present arbitration petition, i.e. the subsequent proceeding for which exclusion of time is claimed.

7 The Supreme Court judgement in **Northern Railway** case (supra), cited by learned Counsel for the Applicant, was on an altogether different footing. That was a petition filed under Section 34 of the Act. After filing of that petition, since there were objections, time was granted by the Deputy Registrar of the court to remove those objections within seven days. That was not done. The applicant removed the office objections and refiled the petition on a later date. In these facts, the Supreme Court held that Section 34(3) of the Act has no application to re-filing of a petition but only applies to the initial filing of a challenge petition under Section 34 of the Act. Thus, in the case before the Supreme Court, the application was actually filed in court, but was not admitted on account of office objections; these objections were removed and the application was refiled. Though such refiling was beyond limitation, the court held the date of filing as the applicable date for reckoning the period of limitation and not the date of its refiling. These facts are clearly distinguishable from the facts of our case. It cannot be said that what was done originally in the Delhi court was filing of a challenge petition and what is done in this court is refiling of that same petition.

8 The Division Bench order of our court in **HRIM Finance and**

Securities Pvt. Ltd (supra) does not indicate the principles on which time, if any, beyond 120 days was condoned by the court. It obviously cannot be used as a precedent for condoning any period over and above 120 days. If that judgement were to be cited as an authority for considering delay beyond 120 days, the Supreme Court judgment in **Simplex Infrastructure Ltd** (supra) could be said to have overruled that judgment. In any event, and at any rate, there is no question of condoning any delay in filing of an arbitration petition beyond the maximum permissible period of 120 days.

9 There is, accordingly, no merit in the Notice of Motion. The Notice of Motion is dismissed. No order as to costs.

10 In view of the disposal of the Notice of Motion, there is no question of registration of the arbitration petition. It will anyway stand rejected under the applicable original side rule on account of non-removal of office objections.

(S.C. GUPTE, J.)