

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.734 OF 2018
IN
NOTICE OF MOTION (L) NO.985 OF 2018
IN
APPEAL (L) NO.147 OF 2017
IN
ARBITRATION NO.1619 OF 2015**

Union of India ..Applicant
IN THE MATTER BETWEEN

Union of India ..Appellant
Versus

M/s. Motor & General Sales Ltd., ..Respondent

Mr. Suresh Kumar a/w Ms. Priyanka Tiwari, Advocate for the
Applicant/Appellant.

**CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.
DATE : 11th JULY, 2019**

P.C.

1] The Appellant and the Respondent had entered into an agreement under which the Respondent was to supply 370 sets of Body Side Arrangement Assembled with Flap Doors and Body End Arrangement for BOXNR Wagon. There was a delay in effecting the delivery. The Appellant levied liquidated damages. The Appellant deducted money payable to the Respondent from the bills raised resulting in the dispute being referred to the arbitrator on account of the agreement containing an arbitration clause.

2] On 9th February 2015 Award was published against the

Appellant with the reasoning that the damages were capable of being proved and the liquidated damages were the upper limit of the damages which could be levied and hence the sum deducted by the Appellant towards liquidated damages was payable to the Respondent.

3] Challenge to the Award dated 9th February 2015 has been dismissed by the learned Single Judge *vide* order dated 1st July 2016.

4] Appeal challenging the decision of the learned Single Judge was preferred with delay of 265 days and seeking delay to be condoned in preferring the Appeal Notice of Motion (L) No.985 of 2017 was filed. The filing being defected and defects not being removed within time granted by the Prothonotary, Notice of Motion (L) No.985 of 2017 was dismissed on 04.08.2017. Seeking setting aside of the order dated 04.08.2017, Notice of Motion No.734 of 2018 has been filed with delay of 377 days.

5] The sufficient cause pleaded seeking delay to be condoned is not upto the mark but since in spite of service there is no opposition from the Respondent, we condone the fatal 377 days delay in filing Notice of Motion No.734 of 2018 and thus restore Notice of Motion (L) No.985 of 2017. For the reasons stated in the said Notice of Motion, we condone 265 days delay in filing the Appeal and allow the Motion.

N. M. JAMDAR, J

CHIEF JUSTICE