

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER ORDER NO.788 OF 2019

IN
ARBITRATION PETITION (L) NO.371 OF 2018

Esha Warrik and Arwin Ricky Warrik	...	Applicants
In the matter between:		
Esha Warrik and Arwin Ricky Warrik	...	Petitioners
Vs.		
Dewan Housing Finance Corporation Ltd.	...	Respondent

Ms Divya Srivastava i/b. Vishwakarma and Associates for Applicants.
Ms Sarita Yadav i/b. Shrivastav & Co. for Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 07, 2020

P.C. :

Heard Ms Srivastava, learned counsel for the applicants and Ms Yadav, learned counsel for the respondent.

2. In Notice of Motion No.1413 of 2018 filed by the petitioners, the following order was passed on 11.12.2018 :-

“ Heard learned Counsel for the applicants.

2. By this application, the applicants/petitioners have prayed for condonation of delay of 7 days in filing the above petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”). The impugned award came to be passed on 29 December 2017. The submission of the learned Counsel for the applicant is that the acknowledgment of the receipt of the award has been misplaced at the hands of the applicants. It is submitted that the limitation period of 90 days in terms of Sub-Section (3) of Section 34 of the Act expired on 28 March 2018 and the extended period of 30 days expired on 27 April 2018. It is submitted that the present petition has been filed on 5 May 2018 and hence there is a delay of 7 days in filing the present Section 34 application which is within the extended period of limitation as stipulated under the proviso to Section 34(3). My attention has been drawn to the averments made in paragraphs 5, 6 and 7 of the notice of motion.

3. Learned Counsel for the respondent has vehemently opposed this application. She submits that the statement as made on behalf of the applicant in paragraph 7 of the affidavit in support of notice of motion of the holidays and more particularly the holiday on 29 March 2018 being Mahavir Jayanti is not correct. It is therefore her submission that delay is not properly explained and the notice of motion is deserved to be dismissed accordingly. On a query being made, learned Counsel for the respondent submits that she would make only oral submissions to oppose this application and the respondent would not be filing any reply affidavit.

4. Having perused the averments as made in the affidavit in support of notice of motion as also having considered the arguments as made on behalf of the respondent, in my opinion, the delay has been sufficiently explained. Admittedly, the delay of 7 days is within prescribed extension of time as per Section 34(3) of the Act. It is thus in the interest of justice that delay in filing the above petition is condoned.

5. Notice of motion is accordingly allowed in terms of prayer clause (a), however, this shall be subject to payment of costs of Rs.5,000/- which shall be paid to the respondent by applicants within a period of two weeks from today.”

3. From the above it is seen that delay of 7 days in filing the related arbitration petition was condoned subject to payment of cost of Rs.5,000.00 within a period of two weeks from 11.12.2018.

4. It is submitted that because of the intervening holidays, the cost of Rs.5,000.00 was deposited on 03.01.2019 which was beyond the two weeks period.

5. On the last occasion i.e. on 10.12.2019, learned counsel for the respondent had raised the preliminary objection that the application is barred by limitation in terms of Article 122 of Part I of Third Division of the Limitation Act, 1963.

6. When this Court had already condoned the delay, question of re-opening the issue of limitation does not arise. Only thing that remains to be considered is the delay in depositing the cost.

7. After hearing learned counsel for the parties and on due consideration, the delay in depositing the cost is condoned.
8. Office to now register the arbitration petition and list the same for admission hearing on 11.02.2020.
9. Chamber order is disposed of accordingly.

(UJJAL BHUYAN, J.)

Minal Parab