

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

**NOTICE OF MOTION NO.830 OF 2019
IN
APPEAL (L) NO.141 OF 2019**

Delta Mechcons (India) Limited ... Applicant/Appellant
Vs.
Gammon India Limited ... Respondent

Ms.Naira Jejeebhoy alongwith Mr.Mangesh Sawant i/by Mr.Arun
Panickar, Advocates for the Applicant/Appellant.
Mr.Rahul Hakani, Advocate for the Respondent.

**CORAM : R.D.DHANUKA &
V.G.BISHT, JJ.
DATE : APRIL 05, 2021.**

P.C. :

1. By this notice of motion the applicant seeks condonation of delay of 27 days in filing the arbitration appeal.

2. In the affidavit in rejoinder the applicant has explained the delay of 10 days in obtaining certified copy. It is explained that the certified copy of the order was made available on 20th February, 2019, but was collected by the applicant's advocate only on 28th February, 2021.

3. In the affidavit in rejoinder of the applicant in paragraph No. 9 the applicant has explained that its advocate had applied for certified copy of the impugned order on 20th February, 2019 .

The certified copy of the impugned order was made ready by the office on 2nd February, 2019 and delivered to the applicant on 4th February, 2019. The period of 10 days in obtaining certified copy of the impugned order should be excluded by virtue of section 12 of the Limitation Act.

4. The respondent thereafter applied for the Speaking to the Minutes of the order dated 21st January, 2019 which was heard on 7th February, 2019. The erstwhile Advocate for the applicant applied for the said order dated 7th February, 2019 on 15th February, 2019. The certified copy of the order dated 7th February, 2019 was made available on 20th February, 2019 and collected by the learned advocate on 28th February, 2021.

5. There is actual delay of 17 days and not 27 days in filing appeal.

6. We have heard learned counsel for the parties and have perused the averments made by the applicant in affidavit in support of the notice of motion the reply filed by the respondent and the affidavit in rejoinder.

7. In paragraph No.3 of the affidavit in support of the notice of motion the applicant has explained the delay in filing appeal.

8. The authorized signatory of the appellant was travelling for business meetings and was seeking business advancement, has assailed the impugned order.

9. The learned counsel for the respondent has opposed this application for condonation of delay on the ground that the applicant is not entitled to exclude the time taken in obtaining certified copy contending that the applicant could have filed an appeal without obtaining certified copy under the Bombay High Court, Original Side Rules.

10. The next submission of the learned counsel is that the impugned order was passed by the learned Single Judge of a commercial court and thus appellant ought to have filed this appeal as commercial court appeal.

11. It is submitted that the delay is not sufficiently explained in the affidavit in support of the notice of motion.

12. In so far first objection raised by the learned counsel for the appellant is concerned that since appeal could have been filed without annexing certified copy, time taken in obtaining certified

copy can not be excluded is concerned, this argument is contrary to Section 12 of the Limitation Act and is accordingly rejected.

13. Learned counsel for the respondent stated that learned Single Judge ought to have decided the matter as a Commercial Court under the provisions of Commercial Courts Act, 2015. There is no dispute that though the learned Single Judge had not decided the matter as a Commercial Court Division, the respondent did not raise any such objection before learned Single Judge when the matter was heard. Appellant has thus filed this appeal under section 37 of the Arbitration and Conciliation Act, and not under section 13 of the Commercial Courts Act, 2015.

14. We have perused the averments made in the affidavit in support. The delay is sufficiently explained. Hence, the following order:-

ORDER

- (i) Notice of motion is made absolute in terms of prayer clause (a).
- (ii) Delay of 17 days in filing appeal is condoned.
- (iii) There is no order as to costs.
- (iv) The office objections shall be removed within four weeks from today.

(v) If the appeal is numbered, the same shall be placed on board for admission on 6th May, 2011.

(V.G.BISHT, J.)

(R.D.DHANUKA, J.)

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