

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

**NOTICE OF MOTION NO.749 OF 2019
IN
APPEAL (L) NO.344 OF 2019**

Platinum Hospitals Private Limited ... Applicant/Appellant
Vs.
Star Protection Private Limited ... Respondent

Mr.Sohail Shaikh, Advocate for the Applicant/Appellant.
Mr.Pradeep Samant i/by M/s Pradeep Samant and Associates,
Advocate for the Respondent.

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

P.C. :

1. Applicant seeks condonation of delay of 63 days in filing appeal.
2. Heard learned counsel for the parties.
3. In paragraph No.4 of the affidavit in support of the notice of motion the applicant has stated that impugned order was passed by the learned Single Judge on 21st January, 2019. The Applicant filed an application for certified copy on 23rd January, 2019. The certified copy was ready for delivery on 10th April, 2019.
4. It is alleged that the clerk who was assigned the work of

collecting the certified copy from the court went to home town with original application for certified copy and payment receipt without any intimation.

5. It is not stated in the affidavit as to when the clerk of the applicant's advocate returned from the home town with the original certified copy and payment receipt. The certified copy was collected on 24th June, 2019. The reasons explained in delay are not satisfactory. The Hon'ble Supreme Court in case of **Government of Maharashtra Vs. M/s Borse Brothers Engineers and Contractors Private Limited in Civil Appeal No.995 of 2021 decided on 19th March, 2021** has held that the delay can be condoned by way of exception and not by way of rule.

6. It is held by the Supreme Court that in a fit case in which a party has otherwise acted *bonafide* and not in a negligent manner, a short delay beyond the period prescribed for filing appeal can in the discretion of the court, can be condoned. Opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or latches.

7. In our view there is no explanation worth contained in the delay application. The respondent has already filed execution

application for enforcement of the impugned order. The principles laid down by the Hon'ble Supreme Court in case of **Government of Maharashtra Vs. M/s Borse Brothers Engineers and Contractors Private Limited** applies to the facts of this case.

8. Considering the facts of this case, no case is made out for condonation of delay in filing appeal.

9. Notice of motion is dismissed.

10. In view of the dismissal of the notice of motion, the arbitration appeal is also dismissed. No order as to costs.

(**V.G.BISHT, J.)**

(**R.D.DHANUKA, J.)**

....