

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2581 OF 2021
IN
ARBITRATION PETITION NO. 70 OF 2017**

Ravindra Eknath Kumawat ... Applicant

Versus

Dharti Infrastructure ... Respondent

Mr. Purushottam Gopal Chavan for the Applicant.
None for the Respondent.

CORAM : R.I. CHAGLA, J.

DATED : 17th JUNE, 2022.

ORDER :

1 Heard the learned Counsel appearing for the Applicant. By this Interim Application, the Applicant is seeking condonation of delay and restoration of the present Arbitration Petition No.70 of 2017 by recall of order dated 11.01.2019.

2 It is stated by the Applicant that the Arbitration Petition was filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. The Arbitration Petition had been permitted to

be amended pursuant to orders of this Court in Civil Application No.2 of 2018 and which amendments were carried out. The Arbitration Petition was listed from time to time but did not reach due to paucity of time. Copy of case status as per CMIS and order dated 29.06.2018 have been annexed at Annexure-A collectively.

3 It is thereafter stated by the Applicant that the Arbitration Petition came up before this Court on 11.01.2019 and the learned Advocate for the Applicant not paying attention to the fact that the matter appeared on board, could not attend the Arbitration Petition and as a result the Arbitration Petition was dismissed for default on the said date.

4 The Applicant has thereafter stated that in the interregnum, the Applicant was unwell due to physical ailments and psychological stress and had undergone medical treatment for considerable time. Thereafter it is stated that the instructing Advocate of the Applicant and legal consultant of the Applicant had left the office and all work of the Applicant in Pune had shifted to Aurangabad. Thereafter reliance is placed on the pandemic Covid-19 and the fact that the Applicant was suffering from various ailments, the medical reports are annexed with the Annexure-C to the Interim Application. It was only in the month of July, 2021 that the Applicant tried to communicate with his instructing

Advocate at Pune and the instructing Advocate informed the Advocate on record of the Applicant who is looking after the Arbitration Petition. It is thereafter only in the month of August, 2021 that the instructing Advocate had informed the Applicant that the present Arbitration Petition was dismissed for default on 11.01.2019. The Applicant received No Objection certificate by the Advocate for the Applicant since he was unable to attend the matter due to his appointment as Government Pleader. Thereafter, the present Advocate has been engaged who received No Objection on 30.08.2021. There was delay because of communication gap between the Advocate of the Applicant and instructing Advocate of the Applicant. In view thereof, there has been delay in filing of the Interim Application which the Applicant claims not intentional. The Applicant has accordingly sought for restoration of the Arbitration Petition to the record.

5 Having considered the submissions of the learned Advocate for the Applicant as well as perusing the averments in the Interim Application, it does appear that there has been negligence on the part of the erstwhile Advocate of the Applicant who was handling the Arbitration Petition when the order dated 11.01.2019 was passed by this Court dismissing the Arbitration Petition for default. The explanation given is that the Advocate for the Applicant skipped the attention of Board and

hence could not attend the Arbitration Petition when the same was called out before this Court. The Applicant appears to have been suffering from various physical ailments and psychological stress, and he has placed reliance on medical reports, medical certificates to that effect. There is also mention of the Covid-19 pandemic and the Advocate for the Applicant changing hands. However, it is apparent from the averments in the Interim Application that there has been negligence on the part of the Advocates for the Applicant as well as the Applicant not paying proper attention to the Arbitration Petition and/or losing sight of the Arbitration Petition.

6 Considering that the Applicant is aged person and had placed reliance on the Advocate for the Applicant and also considering the fact that the Arbitration Petition is for appointment of Arbitrator, lenient view is taken in the matter. However, the Applicant is required to pay cost of Rs.10,000/- for the restoration of the Arbitration Petition considering the enormous delay in seeking such restoration which is only sought to be restored by way of Interim Application on 20.09.2021 filed nearly 2 years 9 months since the passing of the order dated 11.01.2019 dismissing the Arbitration Petition on default. Hence, the following order is passed:

- i) The Arbitration Petition No.70 of 2017 is restored to the file of this Court by recalling the letter dated 11.01.2019 subject to the payment of cost of Rs.10,000/- to be paid by the Applicant to the Maharashtra State Legal Services Authority, within a period of two weeks from the date of this order.
- ii) Delay is condoned subject to payment of cost.
- iii) Interim Application is disposed of in the above terms.

(R.I. CHAGLA, J.)

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signed by
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SUSHIL
WAGHMARE
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