

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 18512 OF 2022
IN
ARBITRATION APPEAL (LODGING) NO. 21136 OF 2022**

Sachendra Sadashiv Shetty and ors. ... Applicants/Appellants
vs.
Ratnakar Anaya Shetty and anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 18510 OF 2022
IN
ARBITRATION APPEAL (LODGING) NO. 21136 OF 2022**

Mr. Amey Deshpande for the applicants/appellants

**CORAM : MANISH PITALE, J
DATE : 19th OCTOBER, 2022**

P.C. :

. This Court has perused application seeking condonation of delay in filing the accompanying appeal. Sufficient explanation is given in the application seeking condonation of delay. Hence, interim application No. 18510 of 2022 is allowed and delay is condoned.

Interim Application No.18512 of 2022:

. This is an application seeking interim stay of the award dated 3rd October, 2018.

2. In the order dated 11th October, 2022, this Court had taken note of the fact that respondent No.2 was served, but so far as the respondent No.1 was concerned, the service was not effected due to insufficient address.

3. Since the learned counsel for the applicants/appellants projected extreme urgency in the matter, the applicants were permitted to serve the counsel representing respondent No.1 in the execution proceedings pending before the Court of District Judge at Nashik.

4. Today, when the application is called out for hearing, learned counsel appearing for the applicants handed over the affidavit of service, showing that copy of papers have been served on the counsel representing respondent No.1 in the execution proceeding.

5. None has appeared on behalf of the respondents.

6. While pressing the prayer for stay, the principal contention raised on behalf of the applicants is that in the present case, the mandate of the learned arbitrator had expired well before the award was pronounced on 3rd October, 2018. It is brought to the notice of this Court that by the order dated 22nd September, 2016 passed by this Court, the learned arbitrator came to be appointed. Although there is no definite document to show as to when the arbitrator entered upon the reference, but the award itself shows that the claim was received on 12th November, 2016. It is submitted on behalf of the applicants that even if the said date is to be taken as the date when the arbitrator entered upon the reference, in terms of Section 29(A)(1) of the Arbitration and Conciliation Act, 1996 (unamended, as it was applicable at the time when the arbitration proceedings commenced in this case), the period of 12 months for pronouncing the award was clearly over, by the time the award was pronounced on 3rd October, 2018. On this basis, the claim that the award was pronounced after the mandate of the arbitrator had expired, appears to be prima facie correct.

7. It is further brought to the notice of this Court that in the arguments and the written notes submitted before the District Court in the application filed under Section 34 of the said Act, the aforesaid point was specifically taken and it was indeed recorded by the District Court in paragraph 7 and yet, there is no discussion or finding in respect of the said issue.

8. This Court has perused the impugned judgment and order dated 13th April, 2022, passed by the District Court at Nashik. It is found that although, the aforesaid issue was raised on behalf of the applicants, there is no discussion or finding thereon. The said issue goes to the very root of the matter and therefore, the applicants have indeed made out prima facie case in their favour for a favourable consideration of the prayer made in the application.

9. Despite service, respondents have not entered their appearance before this Court.

10. In view of the above, there shall be ad-interim stay to the award dated 3rd October, 2018, till the next date of listing.

11. List this application for further consideration on 2nd December, 2022.

(MANISH PITALE, J)

Priya Kambli