

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

INTERIM APPLICATION NO. 178 OF 2020
IN
APPEAL (L) NO. 6 OF 2020

Sree Gokulam Chit & Finance
Company Pvt. Ltd.

....Applicant

V/s.

Mohammad Kadar Hasan

...Respondent

Mr. Vivek Patil a/w Mr. Devesh Sawant i/b Mr. Vivek Patil & Associates for
Applicant/Appellant.

CORAM : K.R. SHRIRAM &
KAMAL KHATA, JJ.
DATED : 5th DECEMBER 2022

PC. :

1. This is an application for condonation of delay in filing the appeal impugning the order and judgment dated 18th July 2019 passed under Section 34 of the Arbitration and Conciliation Act, 1996 (the said Act).

2. There is no explanation to speak of in the application. Of course there are blanks in the appeal as well.

3. Paragraph no.3 of the application reads as under :

3. The Applicant states that the Impugned Order was passed on July 18, 2019. After obtaining copy of the order, the Applicant was seeking legal opinion to challenge the same. The Applicant states that the Impugned Order dated July 18, 2019 has impacted various proceedings involving the Applicant in various courts of Maharashtra as a result of which the Applicant sought the opinion of various lawyers. Hence, there was delay of _____ days in filing the Appeal.

We do not accept this to be sufficient explanation for the delay. First of all there is no evidence that any legal opinion was sought. Secondly, there is nothing to indicate how the impugned order impacted various proceedings and which were those proceedings.

4. In Paragraph no. 4 of the application it is stated there are arguable points of facts and law are involved and if delay is condoned it will not cause loss or prejudice to respondents. Again this is nothing but bald statements. In every matter there will be arguable points of facts and law.

5. The Hon'ble Apex Court in ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer vs. Borse Brothers Engineers And Contractors Private Limited¹*** in paragraph no.63 held as under :

63. *Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.*

(Emphasis supplied)

¹ (2021) 6 Supreme Court Cases 460

6. Therefore, it is very clear that the delay to be condoned in appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 is to be condoned by way of exception and not by way of rule. No case made out for us to carve out an exception. In this case, we also find that the applicant has not acted bonafide and was negligent. Therefore, we are not inclined to exercise our discretion in favour of applicant.

7. Application dismissed.

(KAMAL KHATA, J.)

(K.R. SHRIRAM, J.)