

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

**INTERIM APPLICATION NO. 963 OF 2019**

**IN**

**APPEAL (L) NO. 544 OF 2019**

Villayati Ram Mittal Pvt. Ltd.

....Applicant

V/s.

Schindler India Pvt. Ltd.

...Respondent

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Mr. Mohit Sant i/b Ms. Suchita Tiwari for Applicant/Appellant.

Ms. Prachi Garg a/w Mr. Anuj Savla i/b DSK Legal for Respondent.

Ms. Priyam Singhvi – Representative of Respondent present.

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**CORAM : K.R. SHRIRAM &  
KAMAL KHATA, JJ.**

**DATED : 5<sup>th</sup> DECEMBER 2022**

**PC. :**

1. This is an application for condonation of delay of 64 days. Mr.Sant states that according to him it should have been a commercial matter and therefore delay should have been only 30 days. We do not find any such averment in the application.

2. There is no affidavit in reply opposing the Interim Application. The reason for that is though the Interim Application was lodged on 18<sup>th</sup> November 2019 only after this court gave an opportunity on 28<sup>th</sup> November 2022 that a copy of the application was served on 29<sup>th</sup> November 2022, more than three years after lodging the Interim Application.

3. In such applications for condonation of delay, it is the obligation of applicant to make out a sufficient cause. We have considered the Interim

Application which Ms.Garg strongly opposed. In the Interim Application the reasons given can be found in paragraph no.2 and 3 which read as under :

*2. That there has been a delay in filing the present Appeal before this Hon'ble Court for the reason that inspection of the site was necessitated. Mr. Inder Pal Mittal, Director of the Appellant residing in Delhi was requested to arrange for an inspection by the Notary Public at Delhi office, take photographs of the plant and machinery of the 2 elevators lying unpacked at the site and get a report thereof prepared by the said Notary Public.*

*3. That in the meanwhile, Mr. Inder Pal Mittal became ill and was treated for some period in the B.L. Kapoor Hospital for Appendices and other problems. Thereafter he also suffered from urinal problem for which he was treated by Dr. Taneja at Indraprastha Apollo Hospital, New Delhi. It was because of the unforeseen, unfortunate and serious illness of Mr. Inder Pal Mittal that necessary inspection could not be get done, report could not be prepared and photographs could not be taken which photographs and report will assist this Hon'ble Court to grant justice to the parties.*

Therefore, the delay was due to some inspection, details of which is not provided. Why such an inspection was required for filing the appeal is not explained. The second cause for delay is the director of applicant one Inder Pal Mittal was ill.

In our view there is no sufficient cause made out and in fact an insincere attempt is made to get the delay condoned.

4. We say this because,

(a) Applicant is a company and it would have more than one director;

(b) The application has been signed and verified

by one Mr. Vinod Saraf, Constituted Attorney and not Mr. Inder Pal Mittal;

(c) This Mr. Vinod Saraf had signed and affirmed the petition that was filed by applicant under Section 34 as well, of the Arbitration and Conciliation Act, 1996;

(d) The statement of defence and counter claim in the Arbitration proceedings were signed by one Mr. Surender Kumar Mittal (and not Mr. Inder Pal Mittal) who, in the verification clause had said he was aware of the facts and circumstances of the case;

(e) Witness of applicant in the Arbitral proceeding was also Mr. Vinod Saraf and not Mr. Inder Pal Mittal;

(f) Why Mr. Surender Kumar Mittal could not have instructed the Constituted Attorney Mr. Vinod Saraf to take follow up of this Interim Application is also not explained.

5. The Hon'ble Apex Court in ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer vs. Borse Brothers Engineers And Contractors Private Limited***<sup>1</sup> in paragraph no.63 held as under :

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1 (2021) 6 Supreme Court Cases 460

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)

6. Therefore, it is very clear that the delay, 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. In this case, we are satisfied 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.

8. We are informed by Ms. Garg on instructions from Ms. Singhvi who is present in the court that even the cost of Rs.25,000/- that was imposed in the impugned order dated 14<sup>th</sup> August 2019 has not been paid. It will be open to applicant to recover this cost alongwith Execution Application. Should they wish to amend the Execution Application, they may do so.

9. For this application, Ms. Garg is pressing for cost. Ms. Garg is justified. This application is dismissed with cost in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) to be paid within two weeks from the date this order is uploaded. If not paid this also can be recovered alongwith the Execution Application which can be amended.

(KAMAL KHATA, J.)

(K.R. SHRIRAM, J.)