

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

**ARBITRATION APPEAL NO. 26 OF 2023
WITH
INTERIM APPLICATION NO.7822 OF 2023**

Pune Municipal Parivahan
Mahamandal Ltd.
Through it's Traffic Manager,
Mr. Satish Dnyanoba Gavhane,
Age – 52 years, Occu. - Service,
At – C/of PMPML, PMT Building,
Swargate, Pune-411 037.

....Appellant

Versus

M/S. Travel Time Car Rental Pvt. Ltd.
Through its Director-
Mr. Deorao Shariram Katkar,
Age – 52 years, Occu. - Business,
Astral Court.

... Respondent.

...

Mr. Parag V. Dube for the Appellant.
Mr. Pranav Nair a/w. Ms. Manisha Mane Bhangale i/b.
Parinam Law Associates for Respondent.

...

**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 13 JUNE 2023.

P. C. (Per – Sandeep V. Marne, J.):

This appeal is filed by the Appellant under provisions of Section 37 of the Arbitration and Conciliation Act, 1996 (**Act**) challenging the judgment and order dated 23 February 2023 passed by the Additional District Judge, Pune in Civil Miscellaneous Application No.4 of 2023. The Appellant had filed application under Section 34 of the Act for setting aside Award dated 27 April 2021. By the impugned judgment and order, the District Judge has dismissed an application on the ground that the same was not within limitation.

2. Brief facts of the case are that, in February 2013 the Appellant had issued an advertisement for allotment of buses on contract basis and the Respondent / Claimant was the successful bidder. After award of contract, an agreement was entered into for hiring services of buses to be operated on the routes prescribed by the Appellant. Disputes arose between the parties and a Sole Arbitrator was appointed to adjudicate the disputes. The Ld. Sole Arbitrator made Award in favour of Respondent on 27 April 2021 awarding sum of Rs.38,23,58,123/-.

3. The Appellant received copy of Award immediately after the same was made. The Appellant filed application under Section 34 of the Act for setting aside the Award on 4 January 2023. It was the contention of the Appellant before the District Court that talks of settlement were going between the parties after making of the Award and on that count, the Respondent kept the Appellant under belief that the matter would be

settled for a lesser amount. The District Court held that the application filed by the Appellant was not within limitation. It further held that the application was hit by non-issuance of the prior notice under Section 34(5) of the Act. The District Court therefore proceeded to dismiss the application by its judgment and order dated 23 February 2023. Petitioner has filed the present appeal challenging the judgment and order dated 23 February 2023.

4. We have heard learned counsel appearing for the Appellant who would submit that Respondent committed fraud upon Appellant, on which count the application under Section 34 could not be filed within the stipulated time. He would submit that Respondent's belated moving for execution of the Award is indicative of the fact that it had agreed to settle the dispute. He would place reliance on Section 17 of the Limitation Act, 1963 in support of his contention that the time limit for challenging the award had not commenced on account of fraud played by Respondent.

5. The learned counsel appearing for the Respondent opposed the appeal and pray for its dismissal.

6. The District Court has dismissed the application of the Appellant filed under provisions of Section 34 of the Act essentially on the ground of limitation. It would be relevant to refer to the provisions of Sub-Section 3 of Section 34 which reads thus-

“Section 34....

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

Thus, under Sub-Section 3 of Section 34, an application for setting aside an award cannot be made after expiry of 3 months from the date on which the party making that application receives an arbitral award. Under Proviso of Sub-Section 3 of Section 34, further time of 30 days is allowed within which the Court is empowered to condone the delay for sufficient cause.

7. In the present case, the Award was made on 27 April 2021. There is no dispute that the Appellant received the copy of the Award immediately. In its application filed under Section 34 of the Act, Appellant did not indicate any specific date, on which it received the arbitral award. Therefore parties have proceeded on the basis Award was received by the Appellant on 27 April 2021. The application for setting aside the Award under Section 34 of the Act was filed by the Appellant on 4 January 2023. Thus the application was filed well beyond the maximum permissible period of $90 + 30 = 120$ days. There is nothing under the Act which permits the party to file application for setting aside an Award after expiry of period of 120 days.

8. Coming to the contention of settlement talks, the same could have been a ground to seek condonation of delay beyond period of 90 days but upto the period of 120 days. Under the scheme of Section 34 of the Act, the Court is not empowered to condone the delay in excess of 30 days. Therefore, the alleged settlement talks going on between the parties could not be a reason to condone the delay beyond 120 days. Even otherwise the theory of settlement talk is completely vague.

9. Reliance of the learned counsel for the Appellant on Section 17 of the Limitation Act, 1963 is of no avail. Under clause (d) of Sub-Section 1 of Section 17, the period of limitation does not begin to run until discovery of fraud or any document necessary to establish right of a plaintiff which is fraudulently concealed from him. In the present case, it is not the case of the Appellant that the Arbitral Award was concealed from him by the Respondent. No such pleadings are made in the application under Section 34 of the Act nor are made in the present appeal. Therefore, reliance of the Appellant on the provisions of Section 17 of the Limitation Act is totally baseless.

10. We therefore find that the District Court has rightly rejected Appellant's application for setting aside the Award filed under Section 34 of the Act.

11. Before parting we note that Appellant is a public body. The Award dated 27 April 2021 cast substantial financial liability against the Appellant to be paid out of public funds. The Appellant and its officers

ought to know the scheme of Section 34 of the Act, which does not permit filing of application for setting aside the Award beyond period of 120 days. If the contentions advanced on behalf of the Appellant are to be believed, the officers of the Appellant went on negotiating the settlement with the Respondent and in that process, allowed expiry of maximum permissible period for filing application for setting aside the Award. By doing so, the concerned officers of Appellant company gave finality to the awarded amount. Therefore the Chairman and Managing Director of PMPML will examine the issue and if satisfied and found necessary to take necessary action.

12. With the above observations, the appeal filed by the Appellant is dismissed with no order as to costs. On account of dismissal of the appeal, nothing survives in the Interim Application and the same is also disposed of.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE