

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

**ARBITRATION APPEAL NO. 54 OF 2023
WITH
INTERIM APPLICATION NO. 18024 OF 2023
IN
ARBITRATION APPEAL NO. 54 OF 2023**

Pune Municipal Corporation

...Appellant

Versus

Ujjwal Agro Pvt. Ltd.

...Respondent

* * *

- Mr. Abhijit P. Kulkarni, Mr. Krushna Jaybay and Ms. Sweta Shah, for Appellant.
- Mr. Tushad Cooper, Senior Counsel i/b Ms. Sushma Nagaraj, Ms. Vibhuti Keny and M.s Shreya Singhi, Olive Law, for Respondent.

* * *

CORAM : MANISH PITALE, J.

DATE : 21st DECEMBER, 2023.

P. C. :

1. Heard learned counsel for the appellant as well as respondent.

2. By this appeal, the appellant - corporation has challenged judgment and order dated 06th September, 2023, passed by the Court of District Judge - 2, Pune (hereinafter referred to as the District Court), whereby an application seeking condonation of delay in preferring an application under Section 34 of the Arbitration and Conciliation Act, 1996, has been dismissed.

3. The learned counsel for the appellant - corporation submitted that since the parties were negotiating, the application under Section 34 of the said act, could not be filed within time before

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the District Court.

4. The said aspect of the matter would have been taken into consideration, if at all the application under Section 34 of the said Act was filed within the extended period of 120 days (90 days + 30 days) prescribed under Section 34 of the said Act. A perusal of the impugned judgment and order shows that the District Court has taken into consideration the chronology of events. The date of the arbitral award and the date of filing of the application under Section 34 of the said Act, have been referred to and it was found that the application under Section 34 of the said Act, was filed beyond the aforementioned period prescribed under Section 34 of the said Act.

5. Thereupon, the said District Court relied upon judgment of the Supreme Court in the case of *Union of India Vs. Popular Construction Company*¹, wherein it is held that the Court does not have power to condone the delay beyond the period of 30 days after the initial period of 90 days has expired, for the reason that Section 5 of the Limitation Act does not apply in such cases.

6. The learned counsel appearing for the appellant sought to reply upon judgment of Supreme Court in the case of *Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited*², to contend that the District Court could have considered the explanation put forth on the behalf of the applicant for explaining the

1 (2001) 8 SCC 470

2 (2021) 6 SCC 460

delay in approaching the Court. A perusal of the said judgment does not indicate that the position of law laid down in the case of **Union of India Vs. Popular Construction Company** (*supra*), has been varied in any manner.

7. The learned senior counsel appearing for the respondent is justified in relying upon a subsequent judgment of 3 Hon'ble Judges of the Supreme Court in the case of *Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod and Others*³, to contend that the law laid down in the case of **Union of India Vs. Popular Construction Company** (*supra*), still holds goods.

8. This Court agrees with the submission made on behalf of respondent. Once it is held that the law laid down in the case of **Union of India Vs. Popular Construction Company** (*supra*), applies to the facts of the present case, no fault can be attributed to the District Court in dismissing the application for condonation of delay filed on the behalf of the appellant – Corporation.

9. Hence, there is no merit in the present appeal. Accordingly, it is dismissed.

10. Pending application also stands disposed of.

11. No order as to costs.

(MANISH PITALE, J.)

³ (2022) 4 SCC 162