

Sharayu Khot.

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

NOTICE OF MOTION NO. 2373 OF 2019

IN

ARBITRATION PETITION (L) NO. 689 OF 2019

Harsh Makharia

...Applicant/
Petitioner

Versus

Pushpa Makharia & Ors.

...Respondents

Mr. Gobinda C. Mohanty i/by M/s. Mohanty & Associates for the
Petitioner.

Ms. Pratiksha Khare h/f Mr. Anup Khaitan for the Respondent No. 2.

Ms. Vidya Chaudhari i/by Thakordas & Madgavkar for the
Respondent No. 3.

CORAM : R.I. CHAGLA J

DATE : 31 July 2023

ORDER :

1. By this Notice of Motion, the Petitioner is seeking
condonation of delay in filing the Arbitration Petition.

2. The Petitioner has stated that the signed copy of the

impugned Award dated 5th March 2019 was received by the Petitioner's Advocate on 6th March 2019. The Petitioner's Advocate was instructed to draft the Petition to challenge the impugned Award. However, the Advocate for the Petitioner was not aware that the Petitioner was out of India from 2nd June 2019 to 18th June 2019. The Petition was finalised after the Petitioner returned and filed on 21st June 2019. Hence, there is delay of 24 days in filing the Petition.

3. Affidavit in Reply dated 30th June 2023 is filed by the Respondents, wherein they have stated that they are not aware, when the Advocate for the Petitioner received the arbitration Award and that they have denied that the Petitioner was out of India from 2nd June 2019 to 18th June 2019 as alleged. The Respondents have stated that the Petitioner has made the statement without producing any evidence and hence, cannot be looked into and on this ground, the Notice of Motion be dismissed. The Respondents have referred to a mail attaching the draft Petition dated 2nd June 2019 and hence, they have disputed the fact that the Petitioner was out of India.

4. The Affidavit in Rejoinder dated 7th July 2023 has been filed, wherein the passport copy of the Petitioner has been annexed

and in which there is an outgoing stamp dated 2nd June 2019 and incoming stamp dated 18th June 2019 showing that the Petitioner was not in India during this period.

5. The email dated 2nd June 2019 has been sent by the Advocates for the Petitioner to the Petitioner enclosing the draft Petition. There is a response email dated 2nd June 2019, wherein the Petitioner has stated that the Petitioner is out of India and upon returning on 20th June 2019, the Petitioner will inform his Advocate on 21st June 2019.

6. Thus, there is ample evidence to show that the Petitioner was not in India during the period 2nd June 2019 and 18th June 2019.

7. Hence, the contention of the Respondent that the statement made is without any evidence, cannot be accepted.

8. In any event, the delay of 24 days beyond the statutory period is not beyond the permissible period of 120 days for filing Arbitration Petition under Section 34(3) of the Arbitration and

Conciliation Act, 1996. Accordingly, delay is required to be condoned.

Hence, the following order is passed. :-

- (i) Delay of 24 days in filing the Petition beyond the statutory period of 90 days under Section 34(3) of the Arbitration and Conciliation Act, 1996 is condoned.
- (ii) Registry shall accept the filing of the Arbitration Petition and place it on record.
- (iii) Notice of Motion is accordingly, disposed of.

[R.I. CHAGLA J.]