

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1784 OF 2018
IN
ARBITRATION PETITION (L) NO.869 OF 2018

Brajesh Construction Private Limited ... Applicant / Petitioner
Vs.
Asit C. Mehta Investment Intermediates Ltd. ... Respondent

None for the Applicant / Petitioner.

CORAM : MANISH PITALE, J.
DATE : MARCH 28, 2023

P.C. :

. By this notice of motion, the applicant is seeking condonation of delay of 511 days in filing the accompanying petition under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The impugned arbitral award in the present case was passed on 07.12.2016. The accompanying petition was filed on 02.08.2018. The statements made in the petition as well as the notice of motion sufficiently indicate that the petition was filed much beyond the statutory period under the provisions of the said Act i.e. period of 3 months and 30 days.

3. Section 34(3) of the said Act specifies that an application / petition to challenge an award can be filed under Section 34 of the said Act within a period of three months from the date of the award. It further provides that the Court can entertain a challenge to the arbitral award if such challenge is raised within 30 days beyond the 3 months' period, provided sufficient explanation is given on the part of the applicant / petitioner for the delay in approaching the Court. It is crucial that the words 'but not thereafter' are used in the said provision, which have been interpreted by the Supreme Court to hold that the Court has

power to condone delay only upto 30 days beyond the 3 months' period under Section 34(3) of the said Act. In other words, the Court does not have any power to even consider the prayer for condonation of delay beyond 30 days as noted hereinabove. The said position of law has been laid down by the Supreme Court in the case of *Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department*, (2008) 7 SCC 169 and *Simplex Infrastructure Limited Vs. Union of India*, (2019) 2 SCC 455.

4. In the present case, although the impugned arbitral award was passed as far back as on 07.12.2016 and the accompanying petition was filed as far back as on 02.08.2018, the same along with the notice of motion for condonation of delay was not listed before this Court, even once. The applicant / petitioner made no effort to get the notice of motion and the petition listed before this Court. It was only on direction given by this Court for listing of such matters that the present notice of motion and the petition have come up for consideration today. The name of the advocate for the applicant / petitioner is stated in the cause-list and yet, there is no appearance on behalf of the applicant / petitioner.

5. In view of the above, the notice of motion is dismissed.

(MANISH PITALE, J.)

Minal Parab