

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

NOTICE OF MOTION NO. 1826 OF 2018
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 855 OF 2018

Microvision Technologies Pvt. Ltd. ... Petitioner

Versus

Union of India ... Respondent

Mr. Alankar Kirpekar a/w Sagar Kasar, Shekhar Bhagat, Ayush Tiwari,
Chaitali Bhogle i/b Sagar Kasar for the Petitioner.

Mr. T.J. Pandian a/w Tanisha Raikwar for the Respondent.

CORAM : R.I. CHAGLA, J.

DATED : 19th AUGUST, 2023.

ORDER :

1 By this Notice of Motion the Applicant/Original Petitioner has
sought condonation of delay of 30 days in filing the present Petition by
the Applicant and for the Petition to be taken on record.

2 Mr. Kirpekar, learned Counsel appearing for the Applicant has referred to certain material dates which are as under :

i) The Sole Arbitrator appointed by this Court under

Section 11(6) of the Arbitration and Conciliation Act, 1996 had passed the award on 15.01.2018.

ii) The Petitioner had filed a formal application for clarification dated 14.02.2018 under Section 33 of the Act.

iii) A clarificatory Award was passed in respect of the application on 28.03.2018.

iv) The Petitioner through its Advocate has arranged for payment of Court fees and due to misinterpretation of the Advocate had conveyed insufficient Court fees Rs.8,215/- whereas Court fees were much higher i.e. Rs.1.5 lakh The insufficient Court fees appears to have been tendered on 10.07.2018.

v) On 26.07.2018, the Petition under Section 34 was presented before the Registry but could not be numbered in view of insufficient Court fees being paid and for want of stamp. There were objections raised by the Registry on the Petition.

vi) The matter had been mentioned before this Court on 27.07.2018 seeking extension for payment of Court fees.

vii) The Court fees were paid and challan for payment of stamp was received from the Bank after submission of the Petition under Section 34 having been numbered on 30.07.2018.

3 Mr. Kirpekar has submitted that the reasons for delay in filing the Arbitration Petition has been provided in paragraphs 6 and 7 of the affidavit in support of the Notice of Motion. The Deponent of the said affidavit has stated that as he is the Director of the Petitioner/Applicant, he was required to affirm the Arbitration Petition under Section 34 of the Act. That he was travelling for several days on account of business/work commitments. Further, the Petitioner/Applicant had certain financial difficulties and shortage of funds for payment of Court fees which were required to be arranged. The Petition was affirmed by the Deponent on 26.07.2018 but could not be filed before this Court on the same day as the Petitioner/Applicant could not arrange for funds for payment of Court fees of Rs.1,50,000/- on that date. The Petitioner's Advocate made requisite payment and the Petition was filed only on 30.07.2018.

4 In paragraph 7 of the affidavit in support of the Notice of Motion, the Deponent has stated that the prescribed period of 3 months as provided under Section 34 sub section 3 of Arbitration and Conciliation

Act, expired on 28.06.2018. There was a delay of 30 days beyond the prescribed period of ninety days, occasioned on account of the contingencies aforementioned and that the Petitioner/ Applicant was prevented by sufficient cause from filing the Arbitration Petition by 28.06.2018. The Notice of Motion has been taken out for condonation of delay of 30 days i.e. not beyond the grace period of 30 days in filing the Arbitration Petition. Further, it is stated that rejection of the Application would irreparably and permanently prejudice the Petitioner/Applicant.

5 Mr. Kirpekar has referred to paragraph 8 of the affidavit in support of the Notice of Motion wherein it has been stated by the Deponent that though the grace period of 30 days would have expired on 28.07.2018, that day was a non-working Saturday and the next day, a Sunday, and this Court and its Departments were closed on those days. Consequently, under the provisions of Section 4 of the Limitation Act, 1963, the last day for filing the Petition was the following working day, i.e. Monday, 30.07.2018. The Petition was filed on that day viz. within the grace period of 30 days.

6 Although these averments from part of the affidavit in support of the Notice of Motion dated 18.08.2023, Mr. Kirpekar has tendered an affidavit of the Advocate Pranav Khatul who had identified

the affidavit in support of Notice of Motion. The said affidavit dated 18.08.2023 is taken on record. The Advocate has averred in the said affidavit that the Arbitration Petition under Section 34 was presented to the High Court Department on 26.07.2018. Upon presentation, the Advocate was informed by the Department that the Petition was insufficiently stamped and in view thereof the Department refused to number the Petition. An undertaking had been given by the Advocate on 27.07.2018 and there is a noting of the said undertaking at the reverse of the Arbitration Petition. It is further stated in the said affidavit by the Advocate that on 27.07.2018, the matter had been mentioned before this Court by the Counsel seeking extension of time to pay the Court fees stamp. On the same day, the Advocate paid the Court fees by cheque bearing No.461577 dated 27.07.2018 which has been annexed at Exhibit-A to the said affidavit.

7 Mr. Kirpekar has further referred to the remainder paragraphs of the said affidavit wherein the Advocate has averred that though the Court fee was paid on 27.07.2018, the Court fee stamp had been received only on 30.07.2018 as 28.07.2018 was a non-working Saturday and 29.07.2018 was a Sunday (non working). Accordingly, the Arbitration Petition could only be filed on 30.07.2018 and that there is no delay beyond the grace period of 30 days which is the permissible delay under

Section 34(3) of the Arbitration and Conciliation Act, 1996.

8 Mr. Kirpekar has also referred to the decision of the Delhi High Court in *Delhi Development Authority vs. Amita Nand Aggarwal*¹, and in particular paragraph 9 of the said decision. The learned Single Judge of the Delhi High Court has considered a similar case where the Arbitration Petition though presented within the permissible period of 120 days there were objections raised by the Department with regard to Vakalatnama not properly signed and Court fees of Rs.1,000/- to be attached to the Petition not being attached. The Petition had been returned by the Registry and the same was refiled beyond the period of 120 days.

9 The learned Single Judge has considered the objections and in light of the Petition being filed under Section 34 of the Arbitration and Conciliation Act and having held that there were technical reasons and objections raised by the Registry which were complied with and after rectification, the Petition re-filed within a reasonable period, the Petition must be considered to have been filed on the original date when it was filed in the Registry and not on the date when it was re-filed after removing objections. Making up of deficiency of Court fees and signatures

¹ 2008 SCC OnLine Del 260

on Vakalatnama etc. are not material to the admission of the Petition under Section 34 of the Act. Even under Section 149 of the C.P.C., an Application can be made before the Court seeking time to file Court fees and saving the limitation.

10 Mr. Kirpekar has submitted that in the present case the presentation of the Arbitration Petition was on 26.07.2018 and due to the objections with regard to insufficient Court fees, the matter had to be mentioned before this Court on 27.07.2018 and extension for payment of Court fees was granted and accordingly the Court fees has been paid and challan received on 30.07.2018 which is the date of filing of the Arbitration Petition. He has submitted that the date of presentation i.e. 26.07.2018 being within the grace period of 30 days, this date should be considered by this Court. He has submitted that in any event the re-filing of the Arbitration Petition after removal of objections is within the permissible 120 days under Section 34(3) of the Arbitration Act.

11 Mr. Pandian appearing for the Respondent has submitted that there is no averment in the affidavit in support of the Notice of Motion to the effect that the Arbitration Petition had been presented on 26.07.2018. In fact the affidavit in support proceeds on premise that the Petition was filed only on 30.07.2018 and that condonation of delay of 30 days has

been sought. He has submitted that the reasons for the delay in the affidavit in support of the Notice of Motion is the making up of the deficiency of Court fees and as 28.07.2018 was a non-working Saturday and 29.07.2018 being a Sunday, the Petition could only be filed on 30.07.2018. He has submitted that the non-working days are required to be considered only for the prescribed period i.e. 90 days under Section 34(3) of the Arbitration and Conciliation Act and not for the grace period of 30 days which is at the discretion of this Court. Mr. Pandian has referred to the decision of the Supreme Court in *Assam Urban Water Supply and Sew. Board vs. Subash Projects and Marketing Ltd.*² in support of this contention. He has also relied upon the decision of this Court in *National Highways Authority of India vs. Avinash Purushottam Supe*³. This decision follows the aforementioned decision of the Supreme Court.

12 Mr. Pandian has submitted that the contention on behalf of the Applicant that the Arbitration Petition had been presented on 26.07.2018 i.e. within the grace period of 30 days is an afterthought. He has submitted that there is nothing on the Court's record to show that the Arbitration Petition had been presented on 26.07.2018 as has been contended on behalf of the Petitioner. He has accordingly vehemently

² MANU/SC/0054/2012

³ 2002 SCC OnLine Bom 202

opposed the condonation of delay.

13 Having considered the submissions, it appears from the reverse of the Arbitration Petition that there is an undertaking on behalf of the Advocate for the Petitioner to pay additional Court fees of Rs.1,50,000/- within seven days because limitation period expires on 27.07.2018 and that there is a further noting that the Court fees have been paid by challan dated 30.07.2018. This has been signed by the Advocate for the Petitioner. Further, I have considered the averments in the affidavit of the then Advocate who had given the undertaking at the reverse of the Arbitration Petition. There does appear to be merit in the case of the Applicant that the Arbitration Petition had been presented prior to 30.07.2018. In the said affidavit of the then Advocate, there is mention of the undertaking of 27.07.2018 and annexed to the said affidavit is the cheque for payment of Court fees of Rs.1,50,000/- which cheque is dated 27.07.2018. Further, there is mention in the said Affidavit of the Counsel having mentioned the matter before this Court on 27.07.2018. A memorandum of fees of the Counsel bearing that date is annexed at Exhibit-B to the said affidavit.

14 In the affidavit in support of the Notice of Motion an explanation has been given by the deponent who is the Director of the

Applicant as to the delay in presenting the Petition on account of travelling for several days for business/work commitments and having financial difficulties in arranging funds for payment of Court fees. The deponent of the affidavit in support of the Notice of Motion has apart from mentioning that the payment of the Court fees could not be arranged expeditiously and could only be arranged during the grace period, mentioned that on account of 28.07.2018 being a non-working Saturday and 29.07.2018 being a Sunday, the Petition could only be filed on 30.07.2018 i.e. the 30th day of the grace period. I find from the affidavit in support of the Notice of Motion read with the said affidavit of the then Advocate dated 18.08.2023, there is justification made out for the delay in filing the Arbitration Petition which is in any event within the permissible 120 days under Section 34(3) of the Arbitration Act.

15 I have considered the decision relied upon on behalf of the Petitioner namely *Delhi Development Authority* (supra). The learned Single Judge of the Delhi High Court has considered a similar case where the Arbitration Petition under Section 34 had been presented within the grace period but due to technical objection, it had to be returned and thereafter refiled. The learned Single Judge of the Delhi High Court has held that the first date of filing/presentation of the Petition must be considered and not the date of refiling after removing objections. This

decision is apposite. In fact the present case is on a better footing as in that case that the Petition had been refiled beyond the grace period. In the present case, the re-filing of the Petition is within the grace period of 30 days.

16 There have been arguments on behalf of the Respondent that in computing the grace period, the non working days are not required to be computed. However, it is not necessary to go into this issue, in view of the finding that the material date is the date of presentation of the Arbitration Petition which from the material on record as well as affidavit of the then Advocate who has also identified the Affidavit in support of the Notice of Motion is within the 30 days grace period.

17 Accordingly, in view of my finding that there is a satisfactory explanation for the delay which in any event is within the permissible 120 days from the corrected award dated 28.03.2018, the relief sought for in the Notice of Motion is granted.

18 Accordingly, the Notice of Motion is made absolute in terms of prayer clause (a). There shall be no order as to costs.

(R.I. CHAGLA, J.)