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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1783 OF 2019

IN

ARBITRATION PETITION (L) NO.1434 OF 2018

WITH

CHAMBER ORDER NO.558 OF 2019

(Not on Board. Taken on Board.)

Ravindra Bhaskarrao Patil (Jadhav) ... Applicant / Petitioner
Vs.
Mahindra & Mahindra Financial Services Ltd.... Respondent

Mr. Anand Mahadeo Sanap for Applicant / Petitioner.

CORAM : MANISH PITALE, J.

DATE : MARCH 30, 2023

P.C. :

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

2. In the present case, the petition was filed as far back as on 02.11.2018 along with the notice of motion seeking condonation of delay in filing the accompanying petition challenging the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. Till date, no effort was made for listing of the notice of motion and the petition before this Court. It was only when this Court issued directions for listing of such matters 'kept filed and pending', that the present notice of motion and the petition have come up for consideration today.

3. The notice of motion itself states that the accompanying petition suffers from delay of 548 days. Reasons have been stated in support of the notice of motion as to why delay of 548 days occurred in filing the accompanying petition.

4. This Court has perused the material on record and it is found that the arbitral award in the present case was passed by a sole arbitrator at Mumbai as far back as on 10.04.2012. It appears that the petitioner had approached the District Court at Buldhana under Section 34 of the said Act to challenge the said arbitral award. The said proceeding was rejected on the ground of jurisdiction by the Court of Principal District Judge, Buldhana, holding that only the Competent Court at Mumbai would have jurisdiction to entertain such a challenge.

5. The said order was passed on 31.03.2017. It is an admitted position that the accompanying petition was thereafter filed on 02.11.2018.

6. Section 34(3) of the said Act specifies that a challenge under the said provision to the arbitral award can be raised within a period of 3 months from the award or within a further period of 30 days, if the Court is satisfied that sufficient explanation is given as regards delay beyond 3 months. It is settled position of law that since the aforesaid provision uses the words 'but not thereafter', the Court has no power to condone the delay beyond the period of 30 days after expiry of 3 months period for challenging the arbitral award. The Supreme Court has clarified the said position of law in various judgements, including the judgement in the case of *Consolidated Engineering Enterprise Vs. Principal Secretary, Irrigation Department*, **(2008) 7 SCC 169**.

7. On the aspect as to whether Section 14 of the Limitation Act, 1963 would apply for exclusion of time for the proceeding pursued *bona fide* in court / forum without jurisdiction, in the case of *Simplex Infrastructure Limited Vs. Union of India*, **(2019) 2 SCC 455**, the Supreme Court has held that the delay cannot be condoned when such a petition even otherwise after extending the benefit under Section 14 of the Limitation Act is found to be barred.

8. In the present case, the documents placed on record clearly show that the Court of Principal District Judge at Buldhana had passed its order on 31.03.2017, rejecting the application filed by the petitioner under Section 34 of the aforesaid Act on the ground of jurisdiction.

9. It is an admitted position that the accompanying petition before this Court came to be filed only on 02.11.2018, which is far beyond the period of 3 months and 30 days provided in Section 34(3) of the said Act. Hence, applying the position of law laid down by the Supreme Court in the context of the aforementioned provision, this Court is of the opinion that the notice of motion seeking condonation of delay cannot be entertained. This Court has no power to condone delay beyond the period of 30 days after expiry of 3 months as specified in the said provision.

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

11. In the light of the order passed hereinabove, there is no necessity for the separate chamber order in the matter.

(MANISH PITALE, J.)

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