

K.S. Jadhav

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

INTERIM APPLICATION NO. 1267 OF 2019

IN

ARBITRATION PETITION (L) NO. 1439 OF 2019

Maharashtra Prathmik Shiksha Parishad

...Applicant/
Org. Petitioner

Versus

M/s Precision Precast Solutions Pvt. Ltd.,

...Respondent/
Org. Claimant

Ms. Sheetal D. Gulhane, Advocate for Applicant/Original Petitioner.

Mr. Nachiket V. Khaladkar, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 17TH JULY, 2023.

ORDER :

1. By this Interim Application, the Applicant/Original Petitioner has sought condonation of delay of 1023 days in filing the present Arbitration Petition.

2. The Applicant has stated that the impugned Award is an ex-parte Award passed against the Petitioner. There was delay in

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preferring the Arbitration Petition challenging the impugned Award and the reasons for the delay are mentioned in Paragraphs 8, 9 and 10 of the Interim Application. The Applicant has stated that the reason for delay appears to be that there was time taken to consider whether to challenge the impugned Award and for passing resolution for appointment of State Project Director or any representative for filing Arbitration Petition. This was only recently resolved by a resolution to appoint the State Project Director for the purpose of approaching and representing the State before this Court.

3. Further, in Paragraph 10 of the Interim Application, the Applicant has stated that the State Project Director has a marathon task which involves supervisory, taking report of works of construction of new schools, supply of free books and uniform to children and also visiting remote and hilly places where education was a mere farce, for which he has to travel from one place to another. Thus, the Petitioner could not control the delay in approaching this Court for preferring the present Arbitration Petition. The Applicant has stated that the delay is neither deliberate nor willful but the same was on account of conditions and situations beyond the control and domain of the State, as admittedly, the

Petitioner is a State within the definition of Article 12 of the Constitution of India.

4. The Petitioner has stated that it is likely to succeed on the merits of the Arbitration Petition and by rejecting the Petition, the Applicant would suffer prejudice and harm will be caused to the exchequer which requires to be safeguarded and protected.

5. The learned Counsel appearing for the Applicant has sought to justify the delay of 1023 days in filing the Arbitration Petition and has submitted that the delay beyond 120 days in filing Arbitration Petition can be condoned. She has relied upon the decision of the Chief General Manager (IPC) M.P. Power Trading Co.Ltd. & Anr., s. Narmada Equipments Pvt. Ltd.¹. She has submitted that in the said decision, the Supreme Court had considered that a plea of inherent lack of jurisdiction can be taken at any stage and also in collateral proceedings. She has further relied upon decision of the Supreme Court in Dharma Prathishthanam V/s Madhok Construction (P) Ltd.,² where the Supreme Court has held that the Court has suo motu power or even if the application under Section 30 of the Arbitration Act 1940 is filed outside limitation, to set aside an Award on grounds

¹ Civil Appeal No.1051 of 2021, decision dtd. 23.03.2021

² (2005) 9 SCC 686

other than those covered by Section 30 if the Court finds that the Award is Void, without jurisdiction, patently illegal or directs a party to do an act which is prohibited by law.

6. The learned Counsel appearing for the Petitioner has further submitted that in the facts of the present case, the learned Arbitrator was unilaterally appointed by letter dated 17th December, 2014 and though an objection had been raised by the Applicant on 8th October, 2015, the same was not placed before the impugned Arbitrator and the impugned Arbitrator went ahead and passed the impugned Award. She has submitted that the impugned Award is without jurisdiction as having been unilaterally passed and accordingly, requires to be set aside.

7. The learned Counsel appearing for the Respondent has submitted that the present Interim Application is for condonation of delay which is beyond the 120 days permissible under Section 34(3) of the Arbitration and Conciliation Act, 1996. The submissions which are now made are on behalf of the Petitioner on the ground of lack of jurisdiction of the learned Arbitrator who had passed the Award cannot be placed for consideration in an Application for condonation of delay. He has submitted that there is no reason for the Petitioner

to have not challenged the impugned Award within the permissible 120 days as provided under Section 34(3) and proviso thereto of the Act. Further, the Petitioner had been served with the notice of the impugned Award on the very date when the Award was passed i.e. on 8th November, 2016 and thus, had ample opportunity to challenge the impugned Award including on the ground of lack of jurisdiction.

8. Having considered the submissions, in my view, it is well settled that a Petition challenging an Award is mandatorily to be filed within a period of three months from passing of the Award with a further grace period of thirty days and not beyond. This is as per Section 34(3) read with proviso thereto of the Arbitration and Conciliation Act, 1996. Further, the Court can only allow the Petition to be filed within the grace period of thirty days provided the Court is satisfied that the Petitioner was prevented by sufficient cause from making an application, setting aside the Award within the prescribed period of three months. Thus, in any event a Petition filed beyond the grace period of thirty days cannot be entertained by this Court.

9. This would apply even to a case where the impugned Award had been passed by the Arbitrator lacking in jurisdiction. In any event, the issue of jurisdiction cannot be considered in an

Application for condonation of delay.

10. In the present case, the Petitioner had notice of the impugned Award as is apparent from the notice dated 8th November, 2016 issued by the Arbitrator wherein the Award was sent by Speed Post to both the parties. I do not find any merit in the submissions on behalf of the Petitioner including the placing of reliance upon aforementioned decision of the Supreme Court in ***Chief General Manager, (IPC) M.P. Power Trading Co.Ltd. (supra)*** and ***Dharma Prathishthanam V/s Madhok Construction (P) Ltd. (supra)***. Although the Supreme Court has held that the issue of inherent lack of jurisdiction can be taken at any stage, this cannot give an allowance to the Petitioner to file / set aside a Petition challenging an Award beyond the permissible period of 120 days from the passing of the impugned Award under Section 34(3) read with the proviso thereto of the Arbitration and Conciliation Act, 1996. None of these decisions have so held. Thus, there can be no condonation of delay in filing the Arbitration Petition beyond the permissible period of 120 days from passing the impugned Award.

11. Interim Application is accordingly disposed of.

12. There shall be no orders as to costs.

[R.I. CHAGLA, J.]