

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO. 240/2023 IN
M.C.A. (ST) REVIEW) NO. 3779/2023 IN
WRIT PETITION NO. 7728/2022

(M/s. KJV Alloy Conductors Private Limited Vs. Maharashtra State Electricity Distribution Co. Ltd.,
Mumbai & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N. R. Kanugo, Advocate applicant.
Mr. S.V. Purohit, Advocate for non-applicant No.1
Mrs. M. Deshmukh, AGP for non-applicant No.2.

CORAM : VINAY JOSHI, J.
DATED : 24.02.2023.

Heard

2. This is an application seeking condonation of delay of 72 days caused in filing review application.

3. Primly, it has been submitted that in pursuance of order passed in Writ Petition No. 7728/2022, the applicant has applied in terms of Section 24 of the Code of Civil Procedure ('CPC') before the learned Single Judge of this Court by way of MCA (Tr.) Application No. 873/2022. The said application was decided on 01.02.2023 holding that the application is not maintainable. According to the applicant, due to pendency of said application, delay

has been caused. The other side has not resisted the cause canvassed for condonation of delay.

4. In view of above, delay stands condoned and application is disposed.

5. Review be registered and numbered accordingly.

**M.C.A. (ST) REVIEW) NO. 3779/2023 IN
WRIT PETITION NO. 7728/2022**

1. Heard.

2. This is an application in terms of Order XLVII Rule 1 read with Section 114 of CPC seeking review of the order of this Court dated 08.12.2022. The applicant has initially applied in Writ Petition No. 7728/2022 virtually seeking for transfer of proceeding filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act') pending on the file of the District Judge, Nagpur to the Principal Seat at Mumbai as connected matter are pending at Mumbai. The said petition was disposed of by expressing that the petitioner ought to have resorted the remedy under Section 24 of the CPC for his redressal.

3. In-turn, the applicant has applied under Section 24 of CPC vide MCA (Tr) No. 873/2022 to this Court seeking transfer. Similarly, it was canvassed that the subject matter pertaining to Section 34 of the Arbitration Act, application pending in Nagpur District Court and the subject matter in pending Commercial Arbitration Petition Nos. 451/2017, 457/2017, 458/2017, 463/2017 pending before the learned Single Judge, Principal Seat, Mumbai are one and the same. This Court took a view that since the transfer is sought of the proceeding pending in the Sub-ordinate Court (Nagpur) to the Principal Seat, Mumbai, therefore, Section 24 of CPC would not apply. The learned Single Judge has also expressed that in the situation, Rule 4A of the Bombay High Court Appellate Side Rules, 1960 ('Rules of 1960') would apply which empowers the Hon'ble Chief Justice to make such transfer. With such principle finding and in view of existence of remedy under Rule 4A of the Rules of 1960, it is held that application under Section 24 of CPC is not maintainable. Moreover, liberty was

granted to approach the Principal Seat for appropriate direction.

4. Notably, the learned Single Judge has recorded categorical finding that in all these proceedings, a common question of law and fact has been involved. Mr. Purohit, learned counsel appearing for respondent No. 1 conceded this position.

5. The applicant has pointed out that in similar circumstances, one of the group matter was pending at Nashik District Court, therefore, they had applied for transfer in terms of Section 24 of the CPC to the Principal Seat, in which the matter has been clubbed vide order dated 10.02.2023 in MCA(ST) No. 2275/2023 with MCA (ST) Nos. 2284/2023, 2682/2023.

6. Initially, in writ petition, the petitioner was directed to file transfer application in terms of Section 24(b)(i) of the CPC. However, the learned Single Judge has expressed opinion that Section 24 of CPC would not apply, but the applicant shall apply under

Rule 4A of the Rules of 1960 pertaining to powers of Chief Justice.

7. Since the learned Single Judge has expressed the said view, no option is left other than applying to invoke power under Rule 4A of the Rules of 1960. The parties shall not suffer in legal tantrum and therefore, to meet the ends of justice, following order:-

(I) The Registrar (Judicial) is requested to place the matter before the Hon'ble Chief Justice for transfer of Misc Civil Application No. 908/2017 pending on the file of the District Judge-1, Nagpur to the Principal Seat where related Commercial Arbitration Petition Nos. 451/2017, 457/2017, 458/2017, 463/2017 are pending.

8. In view of above terms, application stands disposed of.

Digitally
signed by
JITENDRA
BHARAT
GOHANE
Date:
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Gohane

JUDGE