

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3397 OF 2023
IN
ARBITRATION APPEAL (L) NO. 30847 OF 2022

M/s. Datacone Wine Industries & Ors. ...Applicants/
Appellants

Versus

The Saraswat Co-operative Bank Ltd. ...Respondent

Mr. Sagar R. Sonawane h/f Umesh H. Pawar for the Appellants.

Mr. Shreesh Oak i/by S.C. Legal for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 7 October 2024

ORDER :

1. By this Interim Application, the Applicants/original Appellants have sought condonation of delay of 55 days in filing the Arbitration Appeal challenging the impugned judgment and order dated 16th July 2022 passed by the Principal District Judge Sangli in Miscellaneous Civil Application No. 144 of 2013.

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2. The Applicants have stated that after passing of the impugned order, the Applicants contacted their advocate on record as they were not being acquainted with the legal proceedings, and upon which they came to know that the Applicants have only remedy to file Arbitration Appeal under Section 37 of the Arbitration Act to challenge the impugned order. Certified copies of the impugned order were applied for before the learned Principal District Judge, Sangli in Civil Miscellaneous Application No. 144 of 2013. The Applicants thereafter, contacted their advocate after obtaining certified copy of the impugned order in the last week of September 2022 and meetings were held between them. Since certain additional documents were required, they further contacted their advocate and the documents were delivered and hence, the Applicants have stated that the Arbitration Appeal could not be filed within limitation because of personal difficulty and that the statutory period of three months expired on 22nd October 2022.

3. The Applicants have in paragraph 3 of the Interim Application stated that because of the Diwali vacation from 22nd October 2022 to 9th November 2022 the filing department of this Court could not be available for regular filing of the Appeal and

hence, there was further delay in filing of the Arbitration Appeal.

4. The learned Counsel appearing for the Applicants have placed reliance on the decision of the Supreme Court in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited**¹, wherein the Supreme Court has held that Section 37 of the Arbitration Act read with Section 43 thereof makes it clear that the provisions of the Limitation Act apply to Appeals that are filed under Section 37. Reference is made to Articles 116 and 117 of the Limitation Act, which provides for limitation period of 90 days and 30 days, depending upon whether the Appeal is from any other Court to a High Court or an intra High Court Appeal. Section 5 of the Limitation Act has been held to apply to the aforesaid Appeals by virtue of Section 43 read with Section 29(2) of the Limitation Act.

5. Further, the Supreme Court has considered that the delay beyond 90 days, 30 days or 60 days respectively is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted *bona fide* and not in a negligent manner, a short

¹ (2021)6 SCC 460 paras 23 and 63

delay beyond such period can, in the discretion of the Court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

6. The learned Counsel appearing for the Applicants state that the delay being of 55 days is required to be condoned, considering that there will be no prejudice caused to the Respondent and no rights have been acquired by the opposite party in equity and justice which may be lost by delay in filing of the Arbitration Appeal.

7. Interim Application has been opposed by the Respondent. The learned Counsel appearing for the Respondent has submitted that there is no proper explanation for the delay and it is merely stated that because of Diwali vacation, the filing department of this Court was not available for filing the Appeal and hence, the Appeal could not be filed and that there is delay in filing of the Appeal. He has thus, submitted that the explanation for delay is unsatisfactory.

8. Having considered the submissions, in my view, there is a short delay beyond the statutory period for filing of the Arbitration Appeal. Section 5 of the Limitation Act applies to an Arbitration Appeal as held by the Supreme Court in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited** (supra). Further, it has been held by the Supreme Court in the said decision that the discretion is always available to the Court when there is a short delay and there is no prejudice caused to the opposite party and/or the opposite party has not acquired rights both in equity and justice which may be lost by the first party's inaction i.e. non filing of the Arbitration Appeal during the statutory period.

9. In view thereof, although there has been not an entirely satisfactory explanation given as to the delay and this can be seen from reliance placed upon the Diwali vacation and filing department not being available, there is explanation given as to the Applicant not being acquainted with the legal proceedings. Hence, the delay is due to the default of the Advocates. The Applicant should not be made to suffer on account of such default.

10. Accordingly, relief sought for in the Interim Application is granted and following order is passed.:-

- (i) Delay of 55 days in filing of the Arbitration Appeal is condoned.
- (ii) The Arbitration Appeal challenging the impugned judgment and order dated 16th July 2022 passed by the Principal District Judge Sangli in Miscellaneous Civil Application No. 144 of 2013 shall be accepted by the Registry.
- (iii) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]