

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.94 OF 2024
IN
WRIT PETITION NO.1664 OF 2024**

Power Automation and Controls, CBD Belapur, Navi Mumbai	]	
	]	.. Petitioner
<i>Versus</i>		
Krish Auto Power (I) Pvt. Ltd., Viman Nagar, Pune	]	
	]	.. Respondent

Mr. Suresh Dhole with Ms. Anuja Trilokekar and Mr. Pravin Mengane,
Advocates for the Applicant-Review Petitioner.

Mr. Rakesh Sharad Patil, Advocate for the Respondent-Original Petitioner.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 23RD AUGUST, 2024.

PC. :

1. Admit. Heard learned counsel for the parties.
2. The applicant-review petitioner, which was the respondent in Writ Petition No.1664 of 2014, seeks review of the order dated 6th February 2024 to the extent that this Court observed that the time during which the aforesaid writ petition was pending be considered as time spent in prosecuting legal remedy.
3. Mr. Suresh Dhole, learned counsel for the applicant submits that on 27th October 2014, an award was passed by the Micro & Small Enterprise Facilitation Council that was constituted under the provisions of the Micro,

Small & Medium Enterprises Development Act, 2006. The non-applicant - original petitioner challenged the aforesaid award in the Court by filing Writ Petition (Stamp) No.34499 of 2014 on 18th December 2014. However, on 4th April 2016, a conditional order was passed by the Registrar (Judicial-I) requiring the office objections to be removed within four weeks failing which the registration of the writ petition was to stand refused. Since the office objections were not removed, the registration of the writ petition was refused and consequently it came to be dismissed. The original petitioner sought restoration of the said writ petition and by order dated 28th June 2022, the writ petition was restored subject to office objections being removed within a period of three weeks. When this order was passed, the present applicant was not heard. Ultimately, on 12th August 2022, the original petitioner was permitted to re-construct the record within a period of two weeks. Even at this stage it is submitted that the applicant was not heard. Thereafter, the original petitioner sought leave to withdraw the writ petition for availing an alternate remedy under Section 34 of the Arbitration and Conciliation Act, 1996. The writ petition was permitted to be withdrawn with aforesaid liberty on 6th February 2024. It is however submitted that in view of the observations made in paragraph 4 of the order dated 6th February 2024, grave prejudice is caused to the applicant. Though the writ petition had been dismissed on 4th April 2016 and was restored after more than five years, benefit of that

period has also been granted to the original petitioner. Relying upon the order passed in Civil Appeal No.7491 of 2023 (*India Glycols Limited and Anr. Vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and Ors.*) by the Supreme Court dated 6th November 2023, it was submitted that the aforesaid observations be recalled.

4. Mr. Rakesh Patil, learned counsel for the original petitioner opposed the prayer. At the outset he submitted that there was a delay on the part of the applicant in seeking review of the order dated 6th February 2024. He further submitted that since all questions raised in the writ petition were kept open, the applicant could raise this issue in proceedings under Section 34 of the Act of 1996. He too sought to rely upon the very same decision on which the learned counsel for the applicant relied. He therefore submitted that there was no reason to review the aforesaid order.

5. In rejoinder, the learned counsel for the applicant referred to paragraph 4.3 of the review petition to indicate that there was no delay in filing the review application.

6. Having heard the learned counsel for the parties, we find that the review petition deserves consideration. The applicant was not heard when the order dated 6th February 2024 was passed. In fact, no notice had been issued in the aforesaid writ petition at any point of time though the said

proceedings were filed on 27th October 2014. We are satisfied that paragraph 4.3 of the review petition indicates sufficient cause for filing the present proceedings after getting knowledge of the order dated 6th February 2024 passed in Writ Petition No.1664 of 2024.

7. Paragraph 4 of the order dated 6th February 2024 passed in Writ Petition No.1664 of 2024 reads as under :-

“4. In view of the fact that this writ petition was originally filed on 18th December 2014, the time from that date till today shall be considered as time spent in prosecuting the legal remedy. All points are kept open.”

8. It can be seen that though the aforesaid writ petition was filed on 27th October 2014, it came to be dismissed on 4th April 2016. It was restored only pursuant to the order dated 28th June 2022. Thus, for a period of almost six years, no proceedings were pending. Further, after restoration of the writ petition, it was pending till 6th February 2024 without any order being passed therein. Since the observations as made in paragraph 4 of the order dated 6th February 2024 tend to cause legal prejudice to the applicant and as the said observations were made in its absence, we are satisfied that the observations being *“In view of the fact that this writ petition was originally filed on 18th December 2014, the time*

from that date till today shall be considered as time spent in prosecuting the legal remedy.” as made in paragraph 4 deserve to be recalled. It may be stated that since all points raised by the original petitioner have been kept open, the same is sufficient to safeguard the interest of the said petitioner in the proceedings filed pursuant to the liberty granted.

9. Hence, for aforesaid reasons, the review petition is allowed. The first sentence in paragraph 4 which reads as *“In view of the fact that this writ petition was originally filed on 18th December 2014, the time from that date till today shall be considered as time spent in prosecuting the legal remedy.”* shall stand deleted from the order dated 6th February 2024. Ordered accordingly.

10. The review petition is allowed in the above terms. No costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]