

Sharayu Khot.

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

COMMERCIAL ARBITRATION PETITION NO. 291 OF 2024

M/s. Bhansali Infotech LLP

...Petitioner

*Versus*

Tukaram Dhondiba Tupe & Ors.

...Respondents

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Mr. Feroz Bharucha with Mr. Milind Nakashe i/by Mr. Daljeet Singh Bhatia for the Petitioner.

Mr. Cherag Bulsara a/w Ms. Vrushali Maindad and Ms. Shaheen Kapadia for the Respondents.  
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CORAM : R.I. CHAGLA J

DATE : 14 November 2024

ORDER :

1. By this Commercial Arbitration Petition under Section 37 of the Arbitration Act, the Petitioner has sought the quashing and setting aside of the impugned judgment dated 11th March 2024 passed by the District Judge – 2, Pune (“**Court below**”) By the said judgment, the Court below had rejected the Application for condonation of delay in filing of the Arbitration Petition under Section 34 of the Arbitration Act. The Court below had referred to

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Section 34(3) of the Arbitration Act under which the Arbitration Petition is to be filed within a period of three months from receipt of the Arbitral Award and under the proviso thereto, a further period of 30 days may be considered, if sufficient cause is shown, but not thereafter.

2. The Court below had also considered the Application which had been taken out for condonation of delay in filing the Arbitration Petition under Section 34 of the Arbitration Act. It is necessary to reproduce paragraphs 6 to 8 of the Application, which read as under :-

*“6. The Applicant further states that, on 22/01/2023 there was a wedding in the family, which Mr. Abhijeet Bhansali attended with his family members. Since December 2022 Mr. Abhijeet Bhansali was busy in the wedding preparations which was to take place on 22/01/2023. Therefore he could not follow up Adv. Sachin Bhosale for drafting of the application u/s 34 of the Act for challenging the arbitral award.*

*7. The Applicant states that, thereafter Mr. Abhijeet Bhansali contracted conjunctivitis on 06/02/2023. Therefore, he was advised not to meet people as it*

*carries the risk of infection. Mr. Abhijeet Bhansali was able to resume his work only from 17/02/2023.*

8. *Thereafter he immediately contacted Adv. Sachin Bhosale regarding the application to be filed u/s 34 of the Act to challenge the arbitral award. At that time, Adv. Sachin Bhosale informed Mr. Abhijeet Bhansali that due to his pre occupied commitments he would not be able to draft and file the application u/s 34 of the Act to challenge the arbitral award.”*

3. The Court below had considered the aforementioned averments and come to a view that the Petitioner herein was well aware of the passing of the Award and the period of limitation to challenge the Award by filing Application under Section 34 of the Arbitration Act. However, instead of showing diligence in pursuing the appropriate remedy of Section 34 of the Arbitration Act, the authorised person of the Plaintiff, namely Abhijeet Bhansali was busy in wedding preparations in Delhi, which wedding was held on 22nd January 2023. The Court below had accordingly, found that this cannot be a just and sufficient cause. Further, the Applicant had failed to produce any material in support of its contents viz. the inability on the part of its Advocate to draft the Application immediately due to prior commitments. The Court below had found

no material to believe that the said Abhijeet Bhansali could only contact his Advocate Mr. Sachin Bhosale after 17th February 2023 as during the period between 6th February 2023 to 17th February 2023, the said Abhijeet Bhansali claims to have contracted conjunctivitis and could not meet people as it carried the risk of infection.

4. The finding of the Court below is that there is a failure to show sufficient cause for the delay in filing the Arbitration Petition under Section 34 of the Arbitral Act. The Court below has found it unacceptable that the Petitioner had to wait till after 17th February 2023 to contact its Advocate Mr. Sachin Bhosale to only be informed by him that he would not be able to draft the Petition due to prior commitments. This shows inaction as much as a lethargic attitude of the Applicant in not challenging the arbitral award within the period of limitation.

5. Further, the Court below has found the reason given for the delay viz. that from the beginning of December, 2022 till 22nd January 2023, the said Abhijeet Bhansali was busy in wedding preparation and further from 6th February 2023 till 17th February 2023, the said Abhijeet Bhansali was advised not to meet people due

to contracting of conjunctivitis, are only the bare words of the Applicant/Petitioner herein. Thus, the Court below rejected the Application for condonation of delay.

6. I have heard the submissions of Mr. Bharucha for the Petitioner. He has submitted that the Application taken out by the Petitioner had been incorrectly rejected by the Court below. He has submitted that sufficient cause has been shown in the Application for not filing of the Arbitration Petition under Section 34 of the Arbitration Act, during the statutory period as well as sufficient cause being made out for the further delay in filing the Arbitration Petition. He has submitted that the Petitioner herein should not be made to suffer on account of its erstwhile Advocate being reluctant to file the Arbitration Petition due to his pre-occupation with other commitments and it taking time to appoint a new advocate for filing the Application under Section 34 of the Arbitration Act.

7. Mr. Bharucha has submitted that there is a medical certificate which had been produced by the Applicant/Petitioner herein before the Court below which shows that the said Abhijeet Bhansali had suffered from contracted conjunctivities on 6th

February 2023 and was advised not to meet people as it carried the risk of infection. He has submitted that the delay of about 23 days beyond the statutory period of three months is within the permissible period of 120 days for filing of the Arbitration Petition. He has accordingly, submitted that this Court may condone the delay and allow the Arbitration Petition to be accepted, particularly, since the Respondents herein have themselves filed an Arbitration Petition under Section 34 of the Arbitration Act challenging the said award, and no prejudice would be caused to the Respondents.

8. Mr. Cherag Bulsara, the learned Counsel appearing for the Respondents has submitted that there is no sufficient cause made out for the condonation of delay in filing of the Arbitration Petition under Section 34 of the Arbitration Act. The reasons given in paragraphs 6 to 8 of the Application do not meet the parameters of sufficient cause for condonation of delay. He has submitted that the arbitral award was received by the parties to the arbitral proceedings on 1st December 2022. The Applicant/Petitioner herein sought condonation of delay in filing of the Petition under Section 34 of the Arbitration Act on the premise that the said Abhijeet Bhansali, representative of the Petitioner, was preparing for a family wedding

which was being held on 22nd January 2023. However, there is no sufficient cause shown as to why for over a period of a month and a half i.e. from the date of receipt of arbitral award till the wedding could no steps be taken to file the Arbitration Petition under Section 34 of the Arbitration Act. Further, the reason given that during the period from 6th February 2023 till 17th February 2023, the said Abhijeet Bhansali had contracted conjunctivities and could not meet anyone, also does not show sufficient cause, considering that the Advocate Mr. Sachin Bhosale had participated in the arbitral proceedings and could very well have prepared the Arbitration Petition prior thereto.

9. Mr. Bulsara has further submitted that the delay after 17th February 2023 in filing the Arbitration Petition has also not been satisfactorily explained other than mentioning that the erstwhile Advocate Sachin Bhosale due to prior commitments, could not draft the Arbitration Petition under Section 34 of the Arbitration Act to challenge the arbitral award.

10. Mr. Bulsara has also referred to the grounds of challenge in the Arbitration Petition under Section 37 of the

Arbitration Act where an entirely new ground has been raised. He has submitted that there is dishonesty on the part of the Petitioner, which requires the Petition to be dismissed.

11. Having considered the rival submissions as well as the findings of the Court below, I find no infirmity in the view expressed by the Court below. The reasons given in the Application for condonation of delay for not filing of the Arbitration Petition within the statutory period under Section 34(3) of the Arbitration Act, are reasons, which do not satisfy the requirement of sufficient cause to be shown under the proviso to Section 34(3) of the Arbitration Act.

12. The Petitioner had ample opportunity to file the Arbitration Petition from the receipt of the impugned award i.e. from 1st December 2022. The reason given of preparations for a family wedding on 22nd January 2023 does not satisfactorily explain why between 1st December 2022 i.e. the receipt of the Award and the family wedding i.e. on 22nd January 2023, could the Arbitration Petition not be filed. Further, the Advocate Mr. Sachin Bhosale had appeared during the arbitral proceedings and was well versed with

the matter and all that was required was for the Petitioner to give instructions to him to prepare the Arbitration Petition under Section 34 of the Arbitration Act.

13. Further, the reason given for the delay in filing the Arbitration Petition i.e. the said Abhijeet Bhansali, representative of the Petitioner, had contracted conjunctivities on 6th February 2022 and from that date till 17th February 2023, he could not contact the Advocate Mr. Sachin Bhosale also does not find favour with this Court.

14. The Application for condonation of delay is absolutely silent as to when the said Abhijeet Bhansali, representative of the Petitioner, searched for a new advocate and ultimately, appointed a new advocate for filing the Arbitration Petition under Section 34 of the Arbitration Act in place of Advocate Sachin Bhosale who is alleged to have expressed his inabilities to do so. Further, there is no document in support of the Petitioner's contention that the erstwhile Advocate Mr. Sachin Bhosale had informed the said Abhijeet Bhansali that he would not be able to draft and file the Application under Section 34 of the Arbitration Act to challenge the

arbitral award. These are just the bare words of the Petitioner.

15. Accordingly, the present Arbitration Petition requires to be rejected, as the Court below has by correctly appreciating the averments in the Application for condonation of delay arrived at a finding that the Petitioner herein has not made out sufficient cause to condone the delay in filing the Arbitration Petition.

16. In view thereof, the present Arbitration Petition under Section 37 of the Arbitration Act is dismissed.

17. There shall be no order as to costs.

**[R.I. CHAGLA J.]**