



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

CIVIL APPLICATION (CAM) NO. 18/2024

IN

ARBITRATION APPEAL STAMP NO. 9646/2024

M/s Hotel Shyamsuman through its partners

Vs.

M/s Buldana Urban Co-operative Credit Society Bank Ltd.

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

Court's or Judge's orders

Mr. Abhishek Tripathi, Advocate for petitioners

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..

ORDER RESERVED ON : 23/10/2024

ORDER PRONOUNCED ON : 28/11/2024

1) Applicants have filed an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and challenged the judgment and order dated 20/10/2023 (hereinafter referred to as the 'impugned order'), passed by the Principal District Judge, Buldana, dismissing the Civil Misc. Application No. 71/2020, filed under Section 34 of the Arbitration and Conciliation Act, 1996. There is delay of 83 days in filing the appeal. Hence, the present application for condonation of delay.

2) It is submitted by the applicants that the application for condoning the delay in filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, was decided by the Principal District Judge, Buldhana on 20/10/2023. Mr. Santosh

Katave was handling the matter. Applicant applied for certified copy on 21/10/2023, which was ready and delivered on 11/11/2023. The applicant is resident of Taluka Karveer, District Kolhapur, and the order was passed by the District Judge Buldhana, as such, there was some delay in receiving the certified copy.

3) Even after receiving certified copy, in view of extensive documentation involved and upon review, initially the local Counsel advised challenging the impugned order before the Principal Seat of the Bombay High Court. However, as District Buldhana is within the territorial jurisdiction of High Court of Bombay Bench at Nagpur, it was advised to file before Nagpur Bench of the High Court. In this exercise some more period was consumed and as per advice of the Counsel at Bombay applicant decided to file proceeding before High Court of Bombay Bench At Nagpur.

4) It is contention of the applicant that the partner of applicant No.1, Mr. Santosh Katave suffered with acute bronchitis, meanwhile, his wife i.e. other partner of applicant No. 1, fell ill and was diagnosed with Jaundice Hepatitis - A, requiring hospitalization from 06/03/2024 to 12/03/2024. Other applicants were not aware about the health issue of their partner. They contacted Advocate at Nagpur and filed this proceeding. As such, 83 days delay has been caused because of the health issue and substantial volume of paper work.

5) We have heard Mr. Tripathi, learned Counsel for applicant, he placed reliance on ***CEAT limited Vs. Viren Mishtra, 2024 SCC OnLine Bom 2068***, wherein, this Court condoned the delay subject to cost. In the said matter, this Court placed Reliance on ***Kalpesh R. Jain Vs. Mandev Tubes Private Limited, 2017 SSC OnLine Bom 8882***, as well as judgment of Hon'ble Apex Court in case of ***Government of Maharashtra (Water Resources Department), Represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited, (2021) 6 SCC 460***, wherein, Hon'ble Apex Court held that the object of Section 29 (2) is to ensure that the principles contained in Section 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local law also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions. As such, in view of the position of law as settled in above judgment, Sub-Section (2) of Section 29 of the Act of 1963, indicates that provisions of Section 4 to 24 shall be attracted, even if in the principal statute i.e. Commercial Courts Act the powers of applicability of the limitation Act is not prescribed.

6) In fact, the limitation is 60 days, in view of the provisions of Section 13 (1-A) of the Commercial Courts Act. Section 13 (1-A) reads as under:

"13.

(1-A) Any person aggrieved by the judgment

or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order.

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

7) In the judgment of ***Borse Brothers*** (supra), it is held as under:

“given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself – Thus, appeals filed under S. 37 governed by Arts. 116 and 117 of the Limitation Act or S. 13(1-A) of the Commercial Courts Act, a 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 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.”

8) In the judgment of ***Goa Shipyard Limited through its Authorized Officer & Additional General Manager (Legal) Kishore Manohar Samant Vs. Shoft***

Shipyard Pvt. Ltd., 2024 SCC OnLine Bom 1168, this Court observed that the Supreme Court has indeed indicated that length of delay in itself cannot be a relevant consideration while considering a prayer for condonation of delay and that the emphasis has to be on sufficiency of cause for condoning delay. A liberal approach has been recommended when the Court does find that genuine reasons have been put forth while seeking condonation of delay. In other words, if the reasons put forth are found to be *bonafide*, the Court would be inclined to condone delay.

9) The reason for delay that is confusion about jurisdiction, substantial volume of paper work and health issues are good grounds to condone the delay. It is also to be considered that, the right to challenge a decision, ought not to be permitted to be defeated on account of delay as a right to file an appeal is a statutory right, as is in the present case which has been so provided by Section 37 of the Arbitration and Conciliation Act, 1996. As the applicants acted bonafidely and not in a negligent manner. It is a fit case to condone the delay.

10) The applicants placed on record medical certificate of applicant Mr. Santosh Katave and his wife. Still considering the amount involved in the matter, it would be appropriate to direct applicants to pay the cost of Rs.5,00,000/-, to the respondents.

11) As such, application is allowed.

12) Delay in filing Arbitration Appeal is hereby condoned, subject to cost of Rs.5,00,000/-, to be deposited in the Court, to be paid to the respondent.

13) The Registry is directed to register Arbitration Appeal.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

Jayashree....