

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 4340 OF 2025

IN

COMMERCIAL ARBITRATION PETITION (L) NO. 8479 OF 2025

Alag Property Constructions Pvt Ltd ...Applicant

In The Matter Between

Alag Property Constructions Pvt Ltd ...Petitioner

Versus

Santosh Apartment Co operative Housing Society ...Respondent
Limited

Mr. Alankar Kirpekar, i/b Mr. Sanjay P. Shinde, for the Petitioner.

Mr. Bhavik Manek, a/w Sagar Amrut Rane, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : OCTOBER 7, 2025

Oral Judgement :

1. This Petition is an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking to challenge an order dated August 22, 2024 passed under Section 17 of the Act by the Learned Arbitral Tribunal directing the Petitioner to undertake specific actions as set out in paragraph 51 of the said order. This Petition has been filed on March 15, 2025, which is eight months after the event.

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2. On the last occasion, the learned Advocate for the Respondent pointed out that the case for condoning delay is not at all made out and the reliance on medical record of Mr. Pratik Somaiya, the director who was in charge of the operations of the Petitioner's company, does not inspire confidence. Towards this end, he tendered a copy of a few photographs downloaded from the social media account of Mr. Pratik Somaiya to indicate that Mr. Pratik Somaiya was holidaying in various locations during the period and that the explanation is not justified.

3. To counter the contention, an additional affidavit dated September 16, 2025 has been filed by Mr. Pratik Somaiya seeking to explain the contentions raised on behalf of the Respondent. A plain reading of the affidavit would indicate that, in a nutshell, it is the contention of Mr. Pratik Somaiya that he never traveled abroad at the relevant time, although the photographs were uploaded contemporaneously with the time when he was convalescing and recovering from treatment for Lymphoma. He would submit that the photographs pertain to earlier holidays and he was merely uploading them in September 2024 and that he had never traveled or participated in any overseas travel in September 2024. Copies of passports of Mr. Pratik Somaiya have been tendered across the bar to indicate that there

is no contemporaneous entry or exit stamp from immigration authorities in any part of the world.

4. Heard Learned Counsel for the parties at some length. The issue in hand is not whether one is entitled to holiday when recuperating from ill health, but whether a sufficient cause has been made out for not filing a challenge in a commercial dispute within the stipulated time prescribed in the statute book. Significantly, the medical certificates relied upon by the Petitioner in both the Interim Application as well as in the additional affidavit pertain to the period prior to the date of which the impugned order was passed.

5. In other words, the health situation of Mr. Pratik Somaiya, including the ill health of his father who was always said to be bedridden even before these proceedings, did not come in the way of participating in the arbitral proceedings. It is seen that, in fact, before the arbitrator, contemporaneous with the ill health that has been brought on record, through the months of June, July and August participation in the arbitration proceedings by the Petitioner is seen. Put differently, the ill health of the directors of the Petitioner did not come in the way of participation in the proceedings by the Petitioner, which is in fact a body cooperate.

6. Thereafter, the impugned order was passed on August 22, 2024. The record shows that the Learned Arbitral Tribunal forthwith wrote an email to the parties on August 24, 2024, asking the parties to collect the order and also attaching a PDF of the said order. However, the next reply from Mr. Pratik asking for a certified copy of the order is sent as late as on January 2025, five months after the said email from the arbitrator.

7. In the interregnum, execution proceedings have been underway and there has been active participation in the execution proceedings too. In the course of execution proceedings, a number of the reliefs granted in the impugned order have already been complied with. What remains to be complied with is the payment of arrears of rent for the period for which members of the society, whose redevelopment was taken up in a Development Agreement, which in turn forms the subject matter of the arbitration agreement, remain unpaid.

8. Likewise, details of any flat bookings and commercial dealings pursuant to the redevelopment remain to be disclosed. All other material reliefs already stand discharged, when one juxtaposes the material on record, it is seen that it is the filing of a Contempt Petition

and an order passed in the Contempt Petition by a Learned Single Judge of this Court on February 25, 2025 that appears to have triggered an escalated effort to file this appeal as an afterthought.

9. This Appeal has been filed on March 15, 2025, a couple of weeks after an order was passed by a Learned Single Judge of this Court in the Contempt Petition filed by the Respondent against the Applicant.

10. Today when the matter was argued, Learned Advocate for the Petitioner was at pains to explain each and every social event that has been brought to bear by the Respondent. The claim is that Mr. Pratik Somaiya was unable to give instructions to his Advocates to file an appeal. He also seeks to explain that the photographs uploaded by him on his social media account were old photographs and it must not be assumed that he was holidaying instead of giving instructions to lawyers.

11. The issue at hand is not about whether a patient can holiday or attend wedding events in the family; the issue is whether the person who is said to be the only person who could decide for the Petitioner was infirm enough not to instruct advocates to file an Appeal in time.

12. Going by the contemporaneous evidence, the grounds on which the condonation of delay is sought do not inspire confidence at all. It is now settled law that when a deadline is fixed for limitation in a statute, the Court must have regard to the deadline as sacrosanct and the expression “sufficient cause” must be truly interpreted to examine if the cause made out is sufficient. In the facts of this case, the Petitioner, which is a body cooperate, has been well represented by authorized persons who participated in the arbitration. The same authorized persons obviously were getting instructions from Pratik Somaiya and his father. Equally, it was very clear that the impugned order was passed in August 2024 and no case has been made out to demonstrate that Mr. Pratik Somaiya was in such a state of infirmity that he was simply unable to even take a view and instruct the filing of an Appeal which he would do six months later but only after contempt proceedings gathered traction. In the era of electronic media, if he could upload old photographs on to social media accounts, he could equally issue directions to file an appeal. The inexorably reasonable inference is that until the contempt proceedings and the execution proceedings gained traction, he did not take the impugned order seriously at all.

13. In these circumstances, I am satisfied that an appropriate case for showing sufficient cause has not been made out. The delay is

not condoned and the Interim Application is *dismissed*. Since, the Interim Application is dismissed, the Petition cannot be considered in this matter.

14. Considering the peculiar facts of the case, it would be appropriate to impose costs in the matter. Since this is a commercial arbitration, cost must follow the event. The Application is *dismissed* with costs which are computed in the sum of Rs.2.5 lakhs payable within a period of four weeks from the date of upload of this order.

15. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]