



Kavita S.J.

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

INTERIM APPLICATION (L) NO.28278 OF 2024

IN

COMMERCIAL ARBITRATION PETITION (L) NO.25371 OF 2024

Kisan Mouldings Limited

...Applicant/
Petitioner

Versus

Micro and Small Enterprises Facilitation
Council (MSEFC) Konkan Thane & Anr.,

...Respondents

Mr. Naushad Engineer, Senior Counsel a/w Mr. Rashmin Khandekar,
Mr. Yohaann Limathwalla, Mr. Pranav Nair, Mr. Ranjeev Carvalho, Ms.
Mehak Shah i/b Mr. Amit Tungare, Ms. Jill Rodricks, Ms. Prisca
Fernandes and Mr. Prathamesh Nirkhe for the Applicant/Petitioner.

CORAM : R.I. CHAGLA, J.

DATED : 25TH SEPTEMBER, 2024.

ORDER :

1. Mr. Naushad Engineer, learned Senior Counsel appearing for the Applicant/Original Petitioner has tendered an Affidavit dated 13th September, 2024 which is in support of the Interim Application for condonation of delay. The said Affidavit is taken on record. Mr. Engineer has also tendered an Affidavit of Service dated 19th

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September, 2024 and Affidavit of Service dated 24th September, 2024 which shows service on the Respondent No.2/Original Claimant of the papers and proceedings and today's listing of the matter. The Affidavits of Service are taken on record. In spite of service, none appears for the Respondent No.2/Original Claimant.

2. By this Interim Application, the Applicant/Original Petitioner has sought condonation of delay (if any) of 272 days in filing of the Petition.

3. The Applicant has stated that the impugned Award was passed on 14th July, 2024 by Respondent No.1 and was received by the Applicant on 2nd August, 2023. Thereafter, on advice of the erstwhile Advocate for the Applicant, the Applicant filed an Application for recall of the impugned Award before the Respondent No.1-MSME Council. The Advocate for the Applicant had emphasized that the recall Application was the most appropriate cause of action to challenge the impugned Award which was an ex-parte Award. The Recall Application was filed on 31st August, 2023.

4. The Applicant has further stated that upon filing of the Recall Application, the Applicant believed that it had acted within the

prescribed period as envisaged under Section 34(3) read with its proviso of the Arbitration Act. Further, the Applicant genuinely believed that the MSME Council would promptly consider and decide on the Application. The Applicant was thereafter served with the Execution Application in March, 2024 as the MSME Council, had failed to consider the Recall Application. The Applicant was advised by their erstwhile Advocate that it would be appropriate to approach the Court by filing of Petition.

5. The Applicant had filed a Writ Petition seeking directions to the MSME Council to hear and dispose of the Recall Application. The Writ Petition is pending before this Court. In the interregnum, the Advocate for the Applicant had advised the Applicant to take out the present Section 34 Arbitration Petition and which was filed on 18th July, 2024.

6. The Applicant has stated that the delay in filing the present Section 34 Petition was entirely unintentional and resulted from inadequate legal advice at the relevant time.

7. Mr. Naushad Engineer, learned Senior Counsel for the Applicant/Original Petitioner has submitted that Section 14 of the

Limitation Act is applicable to an Application under Section 34 of the Arbitration Act. He has referred to the decisions of the Supreme Court viz. *State of Goa Vs. Western Builders*,¹; *Gulbarga University Vs. Mallikarjun S. Kodagali*,²; *Consolidated Engineering Enterprises Vs. Irrigation Department*,³; and *Simplex Infrastructure Limited Vs. Union of India*,⁴ in this context. The Supreme Court has taken a consistent view that there is no provision in the Arbitration Act which excludes the applicability of Section 14 of the Limitation Act to an Application submitted under Section 34 of the Arbitration Act. The Supreme Court has found that Section 43 of the Arbitration Act makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the Award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a Suit in a Court. Hence, Section 43 incorporating the Limitation Act is applicable to the proceedings in the arbitration as it applies to the proceedings of a Suit in the Court. Further, the Supreme Court has held that Section 14 of the Limitation Act does

1 (2006) 6 SCC 239

2 (2008) 13 SCC 539

3 (2008) 7 SCC 169

4 (2019) 2 SCC 455

not provide for a fresh period of limitation but only provides for exclusion of a certain period. Having regard to the legislative intent, it is held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Arbitration Act for setting aside an Arbitral Award.

8. Mr. Engineer has further submitted that the Applicant in the present case had been wrongly advised by the erstwhile Advocate to file an Application for recall and thereafter filed a Writ Petition instead of filing the present Arbitration Petition. He has submitted that Section 14 of the Limitation Act applies to proceedings which have been prosecuted with due diligence and in good faith in a Court which suffers from defect of jurisdiction or other cause of a like nature. He has submitted that the term "Court" in Section 14 of the Limitation Act is to be liberally construed to include within it quasi-judicial tribunals / forum. This has been held in the decision of the Supreme Court in *M.P. Steel Corporation Vs. Commissioner of Central Excise*.⁵

9. Mr. Engineer has submitted that in the present case, the

⁵ (2015) 7 Supreme Court Cases 58

Applicant having filed Recall Application before Arbitral Tribunal which was well within statutory period of three months as envisaged under Section 34(3) of the Arbitration Act i.e. 28 days after receiving the Arbitral Award, this would have to be taken into consideration. Hence, the time which was expended for prosecuting the prior proceedings with due diligence and good faith and which prior proceedings suffered from defect of jurisdiction or other cause of a like nature is to be excluded whilst computing the period of filing the present Arbitration Petition under Section 34(3) read with proviso of the Arbitration Act. Further, the earlier proceeding relates to the same subject matter as these proceedings prosecuted by the same party and hence, all the parameters required to be satisfied before Section 14 of the Limitation Act can be pressed into service have in fact been satisfied. He has accordingly submitted that there is no delay in filing the present Arbitration Petition. In any event, if the Court finds that there is delay, same may be condoned.

10. I have considered the submissions of the Applicant / Petitioner as well as noted that the Respondent No.2/Claimant in the arbitral proceedings has failed to make an appearance inspite of service.

11. It is well settled by the Supreme Court that Section 14 of the Limitation Act is applicable to an Application submitted under Section 34 of the Arbitration Act. This has been held in *State of Goa Vs. Western Builders (supra)*; *Gulbarga University Vs. Mallikarjun S. Kodagali (supra)*; *Consolidated Engineering Enterprises Vs. Irrigation Department (supra)*; and *Simplex Infrastructure Limited Vs. Union of India (supra)*. The Supreme Court has held that the legislative intent is not to exclude the applicability of Section 14 of the Limitation Act from the scheme and language of Section 34 of the Arbitration Act. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for exclusion of the certain period. Although, Section 5 of the Limitation Act is inapplicable and cannot condone delay in filing an Arbitration Petition after lapse of statutory period of three months and further period of 30 days, there is no such exclusion of applicability of Section 14 of the Limitation Act.

12. In view thereof, considering that Section 14 of the Limitation Act is applicable to the present Arbitration Petition filed under Section 34 of the Arbitration Act, in my view, the Recall Application which had been filed by the Applicant before MSME

Council for recall of the Arbitral Award and which Application had been filed upon the advice of the erstwhile Advocate is required to be taken into consideration. This particularly since the Application was filed well within the statutory period of three months from passing of the impugned Award and which Application is still pending. I find that all the conditions which are required to be satisfied before Section 14 of the Limitation Act can be pressed into service as set out in the decision of the Supreme Court in *Consolidated Engineering Enterprises Vs. Irrigation Department (supra)* viz.

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a Court. (Court having been liberally construed to include quasi-judicial tribunal / forum such as arbitral forum. Reference made to *M.P*

Steel Corporation (supra).)

have been satisfied in the present case. Accordingly, I find that there is no delay in filing of the present Arbitral Petition as the time taken in prosecuting the prior proceedings is to be excluded and accordingly, the relief sought for in the present Interim Application is granted.

13. Hence, the following order is passed:

- (i) The Arbitration Petition shall be accepted by the Registry, in view of the findings that there is no delay in filing of the Arbitration Petition under Section 34 of the Arbitration Act.
- (ii) The Interim Application is accordingly disposed of. There shall be no orders as to costs.

[R.I. CHAGLA, J.]