
(2014) 09 BOM CK 0193
In the Bombay High Court
Case No : Writ Petition No. 300 of 2014

Mahindra and Mahindra Financial Services Ltd.	APPELLANT
Vs	
Manik Vitthal Kawle	RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 30, 31, 31(5), 33, 33(4)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 21 Rule 54
Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 438
Limitation Act, 1963 — Section 10, 11, 12, 13, 14, 14

Citation : (2014) 6 ABR 427 : (2016) 2 ALLMR 193 : (2015) 1 ARBLR 195 :
(2014) 7 BomCR 937 : (2015) 4 MhLj 844

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Shailendra S. Gangakhedkar, Advocate for the Appellant; Rajendra G. Hange, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Heard learned Advocates for the respective parties.

2. Rule. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

3. The petitioner, by this petition, seeks to assail the order dated 30.8.2012, passed by the learned Principal District Judge, Beed in Misc. Civil Application No.503 of 2011.

4. The petitioner submits the facts of the case as follows:-

(A) Respondent No.1 had availed of a loan of Rs.3,95,000/- for purchasing a tractor. The said loan was obtained from the petitioner.

(B) Respondent No.2 stood as a guarantor to the said loan transaction.

(C) Respondent No.3 was the sole Arbitrator.

(D) Since there was denial in making repayment of the loan installments and in view of the repeated requests made, which did not yield any result, the petitioner invoked the arbitration clause and the dispute as regards non payment of the loan amount was referred to the third respondent - Arbitrator.

(E) Since respondents 1 and 2, despite several notices and adjournments, failed to appear in the arbitration proceeding, the award dated 16.2.2011 was delivered, directing recovery against respondents 1 and 2.

(F) An application was filed on 12.12.2011 by the petitioner, seeking execution of the arbitral award. This application was preferred after the lapse of the limitation period under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act of 1996").

(G) On 29.9.2012 warrant of attachment was issued under Order XXI Rule 54 of the Code of Civil Procedure ("CPC"), which was executed upon the property of the first respondent.

(H) On 14.12.2011, the respondents moved an application under Section 5 of the Limitation Act, 1963 ("the Act of 1963") along with an application under Section 34 of the Act of 1996, for challenging the arbitral award.

(I) By the impugned order dated 30.8.2012 and after hearing the parties, the learned District Judge allowed the application and condoned the delay by imposing costs of Rs.2,000/-. It was ordered that after depositing the costs, the petition under Section 34 of the Act of 1996 be registered and be taken on the file of the Court for hearing.

(J) The proceedings under Section 34 of the Act of 1996 are excluded from the ambit of Section 5 of the Act of 1963.

(K) The proviso to Sub-section (3) of Section 34 the Act of 1996 is indicative of the fact that a litigating party on making out a case of sufficient cause from being prevented in filing the petition, is granted 30 days beyond the limitation period of 3 months, during which period the petition can be entertained.

(L) The respondents have filed their application six months after the date on which the first respondent received copy of the arbitration award.

(M) The competent Court failed to consider the prohibition laid down in law and the exclusion of Section 5 of the Act of 1963 while passing the impugned order.

(N) Reliance is placed upon reported judgments in support of the contention that even a single day's delay beyond 120 days from the date of receipt of the order, rendered the application under Section 34 of the Act of 1996, untenable.

5. The learned Advocate appearing on behalf of respondent No.1 submits that;

(A) Condonation of delay is to be considered liberally.

(B) Delay of only two months and one day has occurred.

(C) Respondent No.1 has specifically pleaded that though the award was delivered on 16.2.2011, he has received the copy through post on 13.6.2011.

(D) Application was filed on 14.12.2011.

(E) Delay of two months and one day was rightly condoned since Section 5 of the Act of 1963 was applicable to the case of the respondent.

(F) The delay was neither intentional nor deliberate.

(G) The award was delivered ex-parte and by condoning the delay.

(H) The right of the respondents to challenge the award is protected and he cannot be rendered remediless.

6. Having heard the submissions of the learned Advocates for the respective parties and having gone through the petition paper book, it appears that the award at issue, dated 16.2.2011, was delivered after the respondents had failed to appear in the matter despite notices having been served upon the two respondents and the matter being adjourned to enable them to participate in the proceedings. The Arbitrator has considered the documents placed before him, and has delivered the said award.

7. It is not disputed by the respondents that respondent No.1 had obtained a loan and respondent No.2 had stood as a guarantor. It is also not disputed that there were lapses on the part of the first respondent in the repayment of the installments.

8. The issue raised is, as to whether the delay in preferring proceedings under Section 34 of the Act of 1996 beyond three months as originally provided and one more month as provided by proviso, would vest jurisdiction in the competent court to condone the delay.

9. Section 34 of the Act of 1996 reads as under:-

" 34. Application for setting aside arbitral award.

1. Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

2. An arbitral award may be set aside by the Court only if-

a. the party making the application furnishes proof that-

i. a party was under some incapacity, or

ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

iii. the party making the application was not given proper notice of the

appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

b. the Court finds that-

i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

ii. the arbitral award is in conflict with the public policy of India.

Explanation.-Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

4. On receipt of an application under sub-section (1), the Court may, where it is 16 appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

10. Sub-section (1) of Section 34 of the said Act of 1996 enables an aggrieved party to take recourse to a Court against the arbitral award and for seeking setting aside of such award. Several contingencies are incorporated below sub-section (2) as regards the circumstances and the facts in which the award could be set aside.

11. Sub-section (3) and the proviso thereunder, are germane to these proceedings. An application for setting aside is prohibited from being made beyond three months of the date on which the party has received the arbitral award. The proviso thereunder is aimed at securing the interest of the aggrieved party. The discretion is left with the Court to entertain an application even beyond the limitation period of three months provided, the Court is satisfied that the applicant was prevented by a sufficient cause from making such an application within the period of three months.

12. However, I find the fetter that is imposed by legislation through the proviso to be quite significant. Though an application could be entertained by the Court in its discretionary powers within a period of thirty days from the expiry of the limitation period, it cannot be entertained thereafter. The phraseology prohibiting an application after 120 days is "but not thereafter".

13. The contention of the first respondent is that Section 5 of the Act of 1963 would become applicable and the first respondent is rescued by the said provision. Section 5 of the said Act of 1963 reads as under:-

" 5. Extension of prescribed period in certain cases. -Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. -The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

14. It is not in dispute that Section 5 of the Act of 1963 appears to be quite clear in its operation and it is entirely left to the satisfaction of the Court to entertain a proceeding beyond the prescribed period, upon its satisfaction, that the applicant was prevented by a sufficient cause from filing an application within the limitation period.

15. The first respondent has relied upon the judgment of the Apex Court in the case of Union of India (UOI) Vs. M/s. Hanuman Prasad and Bros., . The Apex Court has held that Section 5 of the Act of 1963 was wrongly held to be inapplicable to the proceedings before the Court while reading with Section 30 of the Act of 1996. Section 30 of the Act of 1996 deals with settlements. Section 30, with its four sub-sections reads as under:-

" 30. Settlement.

1. It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

2. If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

3. An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

4. An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."

16. The import and object of Section 30 of the Act of 1996, apparently is to encourage settlement of disputes by bringing the litigating parties together. It is from that point of view that the Apex Court has applied Section 5 of the Act of 1963. The case before the Apex Court was squarely covered under Section 30 of the Act of 1996. In my view, the facts of the case being distinguishable, the Union of India's judgment (supra) would be of no assistance to the respondent whose case falls under Section 34 of the Act of 1996.

17. The first respondent has also relied upon the judgment of the apex Court in the case of The State of Maharashtra and Others Vs. Ark Builders Pvt. Ltd., . Dealing with Section 34 of the Act of 1996, the Apex Court has ruled that the limitation shall start operating only from the date on which the aggrieved party receives a signed copy of the award. Facts of the said case are as follows:-

"(3) On March 20, 2003 the arbitrator gave a copy of the award, signed by him, to the claimant in whose favour the award was made. No copy of the award was, however, given to the appellant, the other party to the proceedings, apparently because the appellant had failed to pay the costs of arbitration. The respondent submitted a copy of the award in the office of the Executive Engineer (appellant no.4) on March 29, 2003, claiming payment in terms of the award. On April 16, 2003, the Executive Engineer submitted a proposal to challenge the award before the Chief Engineer, and the Financial Advisor and Joint Secretary. The respondent sent a reminder to the Chief Engineer on June 13, 2003, for payment of the money awarded to him by the arbitrator and a second reminder to the Secretary and Special Commissioner on January 8, 2004. The Executive Engineer by his letter dated January 15, 2004, acknowledged all the three letters of the claimant and informed him that the government had decided to challenge the award before the appropriate forum.

(4) According to the appellants, the decision to make an application for setting aside the award was taken on December 16, 2003, but no application could be made for want of a copy of the award from the arbitrator. Hence, on January 17, 2004, a messenger was sent to the arbitrator with a letter asking for a copy of the award. The arbitrator made an endorsement on the letter sent to him stating that on the request of the claimant the original award was given to him and the Xerox copy of the award (sent to him along with the letter), was being certified by him as true copy of the award. The endorsement from the arbitrator along

with the Xerox/certified copy of the award was received from the arbitrator on January 19, 2004 and on January 28, 2004, the appellants filed the application under section 34 of the Act.

(5) The respondent raised an objection regarding the maintainability of the petition contending that it was hopelessly barred by limitation. The Principal District Judge, Latur, by order dated February 15, 2007 passed in Civil Application No.84 of 2005 (previously Suit No.1 of 2004) upheld the respondent's contention and dismissed the appellants' application as barred by limitation.

(6) Against the order of the Principal District Judge, the appellants preferred an appeal (Arbitration Appeal No.2 of 2008) before the Bombay High Court.

(7) The High Court upheld the submissions made on behalf of the claimant-respondent, affirmed the view taken by the Principal District Judge and by judgment and order dated October 6, 2009 dismissed the appeal filed by the appellants. It took note of section 31(5) and section 34(3) of the Act and the decision of this Court in Tecco Trichy Engineers and Contractors but rejected the appellant's contention highlighting that the word used in section 31(5) is "delivered" and not "dispatched".

(13) The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law."

18. It was well settled by now that so far as the Act of 1996 is concerned and the area in which Section 34 operates, the limitation would start operating from the date of receipt of the award by the aggrieved party. In the instant case, the first respondent has admitted in paragraph No.2 of its written statement that he had received copy of the award on 13.6.2011 and had moved an application under Section 34(3) of the Act of 1996 on 14.12.2011.

19. Applying the ratio laid down in the case of M/s Ark Builders (supra), respondents 1 and 2 were expected to file their application on/or before 13.9.2011. Having not done so, it leaves the respondents to the mercy of the proviso to Section 34(3) of the Act of 1996. Even as per the proviso, the application should have been filed within thirty days. The respondent therefore, do not dispute that the delay caused was actually of three months and one day, but in the light of the proviso to Section 34(3) of the Act of 1996, the delay

would be reduced to two months and one day.

20. The Apex Court (Three Judges' Bench) in the case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, has dealt with an almost identical issue. The question of limitation under Section 34(3) of the Act of 1996 was raised. Section 5 of the Act of 1963 was sought to be read along with Section 34(3) of the Act of 1996, so as to canvass that the competent Court had jurisdiction to condone the delay and the same was entirely at the discretionary powers of the Court.

21. The Three Judges' Bench considered the contentions of the parties and has finally settled the controversy in paragraphs 10 to 12 of the said judgment, which read as under:-

"10. A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the Court. Section 29(2) of the Limitation Act, inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.

11. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

12. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (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.

The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded."

22. In the said judgment, the Apex Court, therefore, has concluded that an application could be filed under Section 34 of the Act of 1996 within three months, which was extendable, on showing sufficient cause for a period of thirty days, but not thereafter. It has also laid down the law that when the special statute prescribes certain period of limitation, as well as an extension up to a

specific time limit, then the period of limitation provided as such must prevail and to that extent the provisions of the Act of 1963 shall stand excluded.

23. It was, therefore, ruled that the applicability of Section 5 of the Act of 1963 would stand excluded by virtue of Section 29(2) thereof. It is, however, observed that the application of Section 4 of the Act of 1963 would not be excluded, since it pertains to exclusion of time of proceedings, bonafide, in a Court without jurisdiction. In the instant case, it is not the case of the respondents that they had approached a wrong forum and had thus wasted time.

24. This Court had an occasion to deal with a similar situation in the case of M/s. P.C.V. Traders, Prop. Ms. Priti Chandrakant Vora, 10/B, Shashitara Apartments, S.V. Patel Road, Borivali (West), Mumbai 400103 Vs. Kapol Cooperative Bank Limited, Multi State Cooperative Bank Ltd. Ground Floor, Rolex Apartments, S.V. Road, Malad (West), Mumbai 400064, . The learned Single Judge of this Court has concluded in paragraph Nos.6 and 7 as under:-

" 6. I am of the view that the petitions not having been filed within three months from the date of getting the copy of the award is barred by limitation prescribed under section 34(3) of the Act. Even if, the date of receipt of the supplementary award from the arbitrator is considered, three months had already expired when these petitions were lodged. In my view this court was misled by the petitioner by falsely contending that there was delay of only two days in filing petition under section 34 of the Act.

7. In my view the prescribed period for making an application for setting aside arbitral award is three months. The period of thirty days mentioned in proviso to section 34(3) of the Act is not the period of limitation and is therefore, not prescribed period for the purpose of making an application for setting aside arbitral award. The Petitioner has proceeded on the footing that the time to challenge was three months plus thirty days from the date of getting the copy of the supplementary award which is on the face of it contrary to section 34(3) of the Act. I do not propose to go into the issue whether the limitation in this case would commence from the date of getting the copy of the award dated 8th November, 2005 in view of the application filed by the petitioner under section 33(4) of the Act having been dismissed being not maintainable by the learned Arbitrator."

25. It is, therefore, in my view, trite law that under Section 34(3) of the Act of 1996, read with the proviso thereunder, the competent authority would not have jurisdiction to condone the delay caused by the applicant in making an application beyond the maximum period of four months.

26. The respondent has tried to canvass that the judgment of the Apex Court in the case of Hanuman (supra) was not cited before the three Judges' Bench in the case of Consolidated Engineering (supra). It is, therefore, tried to be canvassed that this Court should follow the view taken by the Apex Court in the case of Hanuman (supra).

27. The Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, has dealt with the issue as regards the concept of per incuriam decision and precedential value of a judgment delivered by the Larger Bench. In paragraph Nos.127, 135, 136 and 138, the Apex Court has dealt with the said issue. It would be relevant to reproduce the said paragraphs in this judgment, as under:-

"127. The judgments and orders mentioned in paras 124 and 125 are clearly contrary to the law declared by the Constitution Bench of this Court in Sibbia's case (supra). These judgments and orders are also contrary to the legislative intention. The Court would not be justified in re-writing section 438 Cr.P.C.

"135. A Constitution Bench of this Court in Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, has observed that:

"(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength."

"136. A three-Judge Bench of this court in Official Liquidator Vs. Dayanand and Others, again reiterated the clear position of law that by virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka and Others Vs. Umadevi and Others, is binding on all courts including this court till the same is overruled by a larger Bench. The ratio of the Constitution Bench has to be followed by Benches of lesser strength. In para 90, the court observed as under:-

" We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed."

"138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of judges of co-equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this court. These judgments have clearly ignored a Constitution Bench judgment

of this court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated under section 438 of Cr.P.C.. Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam."

28. The Apex Court by relying upon the judgment in the case of Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, , has observed that the law laid down by the Court in a decision delivered by a Bench of larger strength is binding on any subsequent lessor or co-equal Bench. From the observations as reproduced from paragraphs as above, it is, therefore, clear that the view taken by the Three Judges' Bench of the Apex Court in the case of Consolidated Engineering (supra) will be applicable to this case.

29. By the impugned order, the competent Court has concluded that the delay of two months and one day can be condoned since the delay was neither intentional nor deliberate. It is apparent that the conclusions drawn by the concerned Court are not in consonance with the law as laid down by the Apex Court in the case of Consolidated Engineering (supra) and the view of this Court in the case of PCV Traders (supra). I, therefore, find the impugned judgment to be erroneous and in opposition to settled law.

30. In the result, the impugned order dated 30.8.2012, passed by the Principal District Judge, Beed in Misc. Civil Application No.503 of 2011 is quashed and set aside. Application Exhibit 1, filed by respondent No.1, therefore, stands rejected.

31. The Writ Petition is allowed. Rule is made absolute. No order as to costs.