

Court No. - 1

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 33 of 2022

Appellant :- Ghaziabad Development Authority

Respondent :- M/S S.P.G. Infra Projects (Pvt) Limited

Counsel for Appellant :- Rohan Gupta

Counsel for Respondent :- Abhinay Bhattacharya,Udit Chandra

Hon'ble Shekhar B. Saraf,J.

Civil Misc. Delay Condonation Application

1. Heard Mr. Rohan Gupta, counsel appearing on behalf of the applicant/appellant and Mr. Abhinay Bhattacharya with Mr. Rudeaksh Gupta, counsel appearing on behalf of the respondent.
2. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') arising out of an order passed under Section 34 of the Act.
3. There is an inordinate delay of 966 days in filing this appeal under Section 37 of the Act.
4. In **M/s N.V. International v. State of Asam and others** reported in **2020 (2) SCC 109** [Coram:- Rohinton Fali Nariman and S. Ravindra Bhat, JJ.] and **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.** reported in **(2021) 6 SCC 460** [Coram :- Rohinton Fali Nariman, B.R. Gavai and Hrishikesh Roy, JJ.], the Supreme Court has

stated that such a delay in filing an appeal under Section 37 of the Act cannot be allowed.

5. The issue with regard to filing an appeal under Section 37 of the Act is no longer *res integra* as the same has been settled by the Supreme Court. One may rely on the judgement in **M/s N.V. International (Supra)**, the relevant paragraph thereof is delineated below :-

"4. We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following Lachmeshwar Prasad Shukul and Others (supra), as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned."

6. Furthermore, paragraph 61 of the judgement in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer (Supra)** is required to be looked into. The said paragraph is delineated below:-

"61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) 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."

7. A coordinate Bench of this Court in **National Highway Authority of India Vs. Smt. Sampata Devi and others** reported in **2023 (12) ADJ 787** [Coram:- Om Prakash Shukla, J.], in similar facts and circumstances, discussed in great detail a catena of judgements of the Supreme Court and has come to the following conclusion:-

"(44) In view of the authoritative Judgments of the Apex Court in M/s Borse Brothers Engineers & Contractors (supra), it must be held that an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 should be filed within 60 days from the date of the order as per Section 13(1A) of the Commercial Courts Act, 2015. However, in those rare cases where the specified value is for a sum less than INR 3,00,000.00 then the appeal under Section 37 would be governed by Articles 116 and 117 of the Schedule of the Limitation Act, as the case may be.

(45) Further, Section 5 of the Limitation Act will apply to the appeals filed under Section 37 of the Act, 1996 and in holding the said applicability, the Apex Court noted with affirmative that Section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act, 1996 and merely provides for a limitation period of 60 days from the date of the judgment or order appealed against, without going into whether delay beyond this period can or cannot be condoned.

(46) Further, the expression 'sufficient cause' under Section 5 of the Limitation Act is not elastic enough to cover long delays and merely because sufficient cause has been made out, there is no right to have such delay condoned. The Apex Court further held that only short delays, can be condoned only by way of an exception and not by the way of rule, and that too only when the party acted in a bona fide manner and not negligently.

(47) Since, in the present bunch of appeals, the impugned order passed by the Additional District Judge, Barabanki under Section 34 of the Act, 1996 has been sought to be challenged by

NHAI by filing a belated appeal under Section 37 of the Act, 1996 beyond the permissible 60 days without any "sufficient cause", the above-captioned appeals are held to be time barred."

8. The Supreme Court very recently in **Special Leave Petition (Civil) No.31248 of 2018 titled as Pathapati Subba Reddy (Died) By L.Rs. and others v. The Special Deputy Collector (LA)** [Coram:- Bela M. Trivedi and Pankaj Mithal, JJ.] decided on April 8, 2024, has dealt extensively with the law of limitation and after considering various judgements of the Supreme Court, has laid down certain principles to be followed while applying the law of limitation. The relevant paragraph is delineated below:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even

if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

9. In fact, the Supreme Court while upholding the judgement of the High Court went on to say that just because other persons have been granted relief in other matters that by itself would not be a ground for condoning the delay. The Supreme Court has deprecated the practice of taking lenient view and stated that just because the Courts, on earlier occasions, had taken lenient view would not entitle the appellants as a matter of right to be entitled to condonation of delay where no proper explanation was provided by the them. The relevant paragraphs are delineated below:-

"30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is in violation of the legislative intent or the express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions

have been rendered in ignorance of the earlier pronouncement in the case of Basawaraj (supra).

31. Learned counsel for the petitioners next submitted on the basis of additional documents that in connection with the land acquisition in some other Special Leave Petitions, delay was condoned taking a lenient view and the compensation was enhanced with the rider that the claimants shall not be entitled for statutory benefits for the period of delay in approaching this Court or the High Court. The said orders do not clearly spell out the facts and the reasons explaining the delay in filing the appeal(s) but the fact remains that the delay was condoned by taking too liberal an approach and putting conditions which have not been approved of by this Court itself. In the absence of the facts for getting the delay condoned in the referred cases, vis-a-vis, the facts of this case, it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s)."

10. Upon a perusal of the above judgements, it is clear that the Arbitration Act being a legislation for speedy redressal, the delay in filing the appeal can only be allowed if the appellant makes out a very strong case and explains the reasons for delay. In the instant case, the Appellant has submitted that in October 2019 Dussehra vacations, while the office of the advocate for the Appellant was being shifted, the file of the instant case was misplaced. The advocate for the Appellant further states that the missing of the file only came to light after receipt of a reminder letter dated September 23, 2019 from the Appellant. Having failed to locate the file, the advocate for the appellant sent an email for getting issued fresh certified copies of the impugned judgment and order. In my view, this does not constitute a sufficient ground which would warrant the exercise of this Court's discretionary power in condoning the delay. Misplacement of files due to office shifting, especially during a holiday period, is not an uncommon

occurrence. However, the burden lies on the appellant to ensure that necessary precautions and timely measures are in place to prevent such eventualities from affecting crucial legal processes. The appellant's advocate, being a legal professional, is expected to maintain a higher standard of care in managing case files, especially those that are time-sensitive.

11. This explanation does not cut any ice whatsoever as the law of limitation as explained in the judgments above and elaborated in the judgment in **Pathapati Subba Reddy (Died) By L.Rs. and others (supra)** penned by Hon'ble Pankaj Mithal, J. is that the discretionary power is only to be exercised when sufficient cause is made out and compelling reasons are provided for condonation of delay. In the present case, one does not find any such reason provided which would enable this Court to condone the delay. In fact, it is crystal clear that the appellant has acted in a lackadaisical manner. It is clear that this appeal has been filed with a delay of 966 days. The filing of this appeal is a mere attempt to cloak the laissez faire attitude taken by the appellant.

11. In the light of the above, the delay condonation application is rejected.

Appeal

12. Since the delay condonation application has been rejected, consequently, the appeal is dismissed as barred by limitation.

Order Date :- 28.5.2024

Rakesh

(Shekhar B. Saraf, J.)