

2022 LiveLaw (SC) 430

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

INDIRA BANERJEE; A.S. BOPANNA, JJ.

SLP (CIVIL) NO. 5301 OF 2022; APRIL 04, 2022

STATE OF UTTAR PRADESH & ORS. *Versus* M/S SATISH CHAND SHIVHARE AND BROTHERS

Arbitration and Conciliation Act, 1996; Section 37 - Limitation Act, 1963; Section 3, 5 - The right of appeal is a statutory right, subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue, and/or the right to appeal. Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant.

**Arbitration and Conciliation Act, 1996; Section 37 - Limitation Act, 1963; Section 3, 5 - The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause - A different yardstick for condonation of delay cannot be laid down because the government is involved.
(Para 17)**

Limitation Act, 1963; Section 3, 5 - The Court considering an application under Section 5 of the Limitation Act may also look into the prima facie merits of an appeal - A liberal approach, may adopted when some plausible cause for delay is shown - When consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay - Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy - The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning. (Para 22)

Arbitration and Conciliation Act, 1996; Section 37 - The ground that delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act is not condonable beyond 120 days is misconceived. [Referred to Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Ltd. (2021) 6 SCC 460] (Para 23)

Arbitration and Conciliation Act, 1996; Section 34 - The Court does not sit in appeal over the award of an Arbitral Tribunal. Nor does the Court re-assess or re-appreciate evidence under Section 34 of the Arbitration and Conciliation Act. The scope of interference with an award is limited. An award can only be challenged on grounds mentioned in Section 34(2) of the Arbitration and Conciliation Act - If any provision of a contract is capable of two interpretations, and the interpretation made by the Arbitrator is a possible interpretation, if not a plausible one, it cannot be said that the Arbitrator had acted outside his

jurisdiction or that the view taken by him was against the terms of the contract. Similarly, evidence analysed by the Arbitral Tribunal cannot be re-analysed by the Court. (Para 11-12)

(Arising out of impugned final judgment and order dated 27-01-2021 in FAFOD No. 782/2019 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Rana Mukherjee, Sr. Adv. Mr. Ajay Vikram Singh, AOR Mr. Manoj Kumar, Adv. Ms. Priyanka Singh, Adv. Mr. Neelambar Jha, Adv. Mr. Chandra Shekhar, Adv.

For Respondent(s) Dr. Sumant Bharadwaj, Adv. Mr. Vedant Bharadwaj, Adv. Ms. Mridula Ray Bharadwaj, AOR

ORDER

This Special Leave Petition is against an order dated 27th January 2021 passed by the High Court of Judicature at Allahabad, dismissing the First Appeal filed by the Petitioners against an order dated 26th April 2018 passed by the learned District Judge, Agra rejecting the Arbitration Miscellaneous Case No. 281 of 2010 filed by the Petitioners under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award dated 17th April 2010 passed by the Arbitral Tribunal comprised of a former High Court Judge. The First Appeal has been dismissed solely on the ground of delay.

2. The Petitioner State of Uttar Pradesh invited tenders for construction of a Gymnastic Hall in Eklavya Sports Stadium at Agra, pursuant to which the Respondent submitted its tender. The tender submitted by the Respondent being the lowest, the same was accepted.

3. A contract dated 22nd September 1998 was executed by and between the Superintending Engineer, Agra Firozabad Circle, Public Works Department, Agra representing the State of Uttar Pradesh and the Respondent, for construction of the Gymnastic Hall for consideration of Rs.48,55,800/-. The construction was to be completed in twelve months' time.

4. The said contract dated 22nd September 1998 contained a clause for arbitration. Disputes and differences arose over claims raised by the Respondent on the Petitioner State of Uttar Pradesh, whereupon the Respondent invoked the arbitration clause. Shri N.L. Ganguly, a former Judge of Allahabad High Court was appointed Arbitrator.

5. The Respondent filed its Statement of Claim and the Petitioners filed their Counter Statement/Written Statement. The Written Statement was also permitted to be amended. The validity of the Arbitration Agreement, the arbitrability of the claims raised by the Respondent or the competence of the Arbitral Tribunal to adjudicate the disputes was not in question. After perusing the pleadings and hearing the respective parties, the learned Arbitral Tribunal framed about 18 issues. The respective parties adduced evidence and advanced arguments on each of the issues framed by the Arbitral Tribunal.

6. The learned Arbitral Tribunal made and published an award on 17th April 2020, allowing the claim petition filed by the Respondent and holding, inter alia, that the Respondent was entitled to recover Rs.40,61,264/- from the Petitioners. Each of the issues framed by the Arbitral Tribunal was dealt with by giving cogent reasons.
7. On consideration of materials and/or evidence on record the learned Arbitral Tribunal found that the contract specifically provided for payment for additional or extra work. The Petitioner State failed to cooperate in speedy completion of contract work. Running bills were not paid in time. The final bill was to be prepared by the concerned Engineer of the Public Works Department. The bills were not prepared in time. The Petitioner, State of Uttar Pradesh, had not made excess payment to the Respondent as alleged. The learned Arbitrator also rejected the contention of the Petitioner State that the final payment for the contract of the work had not been made because of want of consent on the part of the Respondent.
8. The Arbitrator rejected the contention of the Petitioner State that it was a condition of the contract that payment in terms of the contract would be subject to availability of funds released by the State of Uttar Pradesh. Such contention of the Petitioner State was preposterous and in any case, unsubstantiated. The Arbitral Tribunal found that the Respondent had been directed to execute additional work in excess of the contract value of Rs.48,55,800/-. The final bill produced by the Petitioner State was found not to be reliable. The final bill raised by the Respondent, supported by documents was accepted as correct. The Respondent was also found to be entitled to return of security deposit.
9. A perusal of the Award makes it amply clear that the learned Arbitrator heard the respective parties, considered the Statement of Claim filed by the Respondent, the Counter Statement/Written Statement filed by the Petitioner State, which had even been amended, and the evidence adduced by the parties.
10. The Petitioners filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 in the Court of the District Judge, Agra, for setting aside the award.
11. The Court does not sit in appeal over the award of an Arbitral Tribunal. Nor does the Court re-assess or re-appreciate evidence under Section 34 of the Arbitration and Conciliation Act. The scope of interference with an award is limited. An award can only be challenged on grounds mentioned in Section 34(2) of the Arbitration and Conciliation Act. There was no such infirmity or patent illegality in the award, which called for interference of Court. The Petitioners failed to make out any of the grounds contained in Section 34(2) of the Arbitration and Conciliation Act for the setting aside of an arbitral award.
12. It is well settled that if any provision of a contract is capable of two interpretations, and the interpretation made by the Arbitrator is a possible interpretation, if not a plausible one, it cannot be said that the Arbitrator had acted outside his jurisdiction or that the view taken by him was against the terms of the

contract. Similarly, evidence analysed by the Arbitral Tribunal cannot be re-analysed by the Court.

13. By a judgment and order dated 26th April 2018, the learned District Judge, Agra dismissed the said application under Section 34 of the Arbitration and Conciliation Act. There was no such infirmity or illegality in the said judgment and order of the learned District Judge, that called for interference in an Appeal under Section 37 of the Arbitration and Conciliation Act.

14. The Petitioners, however, filed an appeal against the said judgment and order in the High Court under Section 37 of the Arbitration and Conciliation Act on 9th July 2019, even though a certified copy of the impugned judgment and order had been received by the Petitioners on 9th May, 2018. The appeal was beyond time by 337 days.

15. The Petitioners filed an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal, supported by an affidavit of one D.K. Singh, posted as Assistant Engineer in the Provincial Division of the Public Works Department, Agra. The relevant paragraphs from the said affidavit are set out hereinbelow:

"1. That, the deponent is presently posted as Assistant Engineer, Provincial Division, Public Works Department, Agra and has been authorized to file this affidavit on behalf of appellants in the abovenoted First Appeal From Order and as such, he is fully acquainted with the facts deposed to below.

2. That, after receiving the judgment and order dated 26.04.2018 passed by the District Judge, Agra under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitration Misc. Case No.281 of 2010, (State of U.P. and Others vs. M/s Satish Chand Shivhare and Brothers) on 09.05.2018, the legal opinion was sought from the District Government Counsel (Civil), Agra, who submitted its report on 10.05.2018. A true copy of letter dated 10.05.2018 of District Government Counsel (Civil), Agra is being filed herewith and marked as Annexure No.1 to this Affidavit.

3. That thereafter the Executive Engineer, Provincial Division, Public Works Department, Agra vide letter dated 02.06.2018 has nominated the Assistant Engineer, Provincial Division, Public Works Department, Agra to file First Appeal From Order before the Hon'ble High Court against the order dated 26.04.2018 passed by the court below. A true copy of letter dated 02.06.2018 of Executive Engineer, Provincial Division, Public Works Department, Agra is being filed herewith and marked as Annexure No.2 to this affidavit.

4. That the Executive Engineer, Provincial Division, Public Works Department, Agra vide letter dated 05.07.2018 sent the proposal for filing First Appeal From Order before the Hon'ble Court to the Superintending Engineer, Agra circle, PWD, Agra, so that the necessary proceedings may be initiated in the matter. A true copy of letter dated 05.07.2018 of Executive Engineer, Provincial Division, Public Works Department Agra is being filed herewith and marked as Annexure No.3 to this affidavit.

5. That thereafter the Superintending Engineer, Agra circle, PWD, Agra vide letter dated 05.07.2018 sent the said proposal and narrative of the case for filing First Appeal From Order to the Chief Engineer, Agra Region, Public Works Department, Agra and requested for necessary proceedings. A true copy of the letter dated 05.07.2018 of Superintending Engineer, Agra Circle, PWD, Agra is being filed herewith and marked as Annexure No.4 to this affidavit.

6. That it is relevant to mention here that the office of Engineer in Chief, Samanya varg, Public Works Department, Lucknow sent a letter dated 09.07.2018 to the Special Secretary, Public Works Department, Anubhag-7, U.P. Shasan, Lucknow requesting therein to make available the permission, so that the first appeal From Order against the order dated 26.04.2018 passed by the District Judge, Agra under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitration Misc. Case No.281 of 2010, (State of U.P. and others vs. M/S Satish Chand Shivhare and Brothers) may be filed before the Hon'ble Court. A true copy of letter dated 09.07.2018 written from the office of Engineer in Chief, Samanya Varg, Public Works Department, Lucknow is being filed herewith and marked as Annexure No.5 of this affidavit.

7. That the office of Engineer-in-Chief, U.P. P.W.D. Samanya Varg, Lucknow wrote a letter dated 08.10.2018 to the Special Secretary, Public Works Department requesting therein to amend/correct the permission dated 29.08.2018 granted by the Law Department for filing first appeal from order against the order dated 26.04.2018 passed by the District Judge, Agra under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitration Misc. Case No.281 of 2010, (State of U.P. and others vs. M/s Satish Chand Shivhare and Brothers). A true copy of letter dated 8.10.2018 written from the office of Engineer-inChief, U.P. P.W.D. Samanya Varg, Lucknow is being filed herewith and marked as Annexure No.6 to this affidavit.

8. That thereafter the Law Department, Government of U.P., Lucknow has corrected/amended the permission dated 29.08.2018 granted earlier vide permission letter dated 01.02.2019 for filing First Appeal From Order against the judgment and order dated 26.04.2018 passed by the District Judge, Agra under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitration Misc. Case No.281 of 2010, (State of U.P. and others vs. M/s Satish Chand Shivhare and Brothers). A true copy of permission dated 01.02.2019 granted by the Law Department, U.P. Government, Lucknow is being filed herewith and marked as Annexure No.7 to this affidavit.

9. That the Joint Secretary, Public Works Department, Anubahg-7 U.P. Shasan, Lucknow vide letter dated 12.02.2019 sent the permission to the Engineer-in-chief (Samanya Varg), PWD, U.P. Lucknow and directed to do the needful in the matter. A true copy of letter dated 12.02.2019 of Joint Secretary, Public Works Department, Anubahg-7 U.P. Shasan, Lucknow is being filed herewith and marked as Annexure No.8 to this affidavit.

10. That after receiving the permission the Executive Engineer, Provincial Division, PWD, Agra wrote a letter on 05.04.2019 directing the deponent to approach the office of the Chief Standing Counsel, High Court Allahabad for filing appeal against the judgment and decree dated 26.04.2018 passed by the District Judge Agra under Section 34 of the Arbitration and Conciliation Act, 1996 in Arbitration Misc. Case No.281 of 2010. (State of U.P. and others vs. M/s Satish Chand Shivhare and Brothers) may be filed before the Hon'ble Court.

11. That after receiving the permission and after collecting all relevant material the deponent approached the office of Chief Standing Counsel, High Court, Allahabad on 08.04.2019 and the file was allotted to the standing Counsel who after perusing the entire record dictated the First Appeal From Order and the same is being filed without any further delay. It is, therefore, expedient in the interest of justice that this Hon'ble Court may kindly be pleased to condone the delay in filing the present writ petition and treat the same as filed well within time."

16. The High Court found that limitation had started to run before 9th May 2019. However, the First Appeal was filed on 9th July 2019, over one year after service of the Award dated 26th April 2018 on the Petitioners.

17. The explanation as given in the affidavit in support of the application for condonation of delay filed by the Petitioners in the High Court does not make out sufficient cause for condonation of the inordinate delay of 337 days in filing the appeal

under Section 37 of the Arbitration and Conciliation Act. The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause. The Government Departments are under an obligation to exercise due diligence to ensure that their right to initiate legal proceedings is not extinguished by operation of the law of limitation. A different yardstick for condonation of delay cannot be laid down because the government is involved.

18. As held by this Court in *Basawaraj and Anr. v. Special Land Acquisition Officer*¹:

*“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629].)*

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11. *The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201].)*

12. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.*

¹ (2013) 14 SCC 81

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15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”*

19. The High Court dismissed the Appeal holding:

*“In **M/s N.V. International Vs. The State of Assam & Ors.**; (2020) 2 SCC 109, the Supreme Court followed its earlier decision in **Union of India v. Varindera Construction Ltd.** passed in SLP (C) No. 23155 for 2013, decided on 17.09.2018. Following that decision, the Supreme Court has observed as under:*

*“5. 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 & Ors.** (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 . Accordingly, the appeal is dismissed.”

20. The Petitioners have, in this Special Leave Petition, raised the following questions of law:

A. Whether a good case on merits involving huge public money can be dismissed on the grounds of delay alone, without even discussing the merits of the entire case?

B. Whether Court is not obliged, while exercising jurisdiction u/s 5 of Limitation Act, to also consider/discuss the merits of the case?

c. Whether procedural formalities (which are sine qua non in Government Departments) should not be given any due consideration while deciding the fate of rights and liabilities of the parties?

d. Whether dismissing the Appeal of a Government body on delay does not amount to unjust enrichment of the Claimant as the merits of the case have not been discussed by the Appellate Court?

21. The questions of law purported to be raised in this Special Leave Petition are misconceived. The right of appeal is a statutory right, subject to the laws of limitation. The law of limitation is valid substantive law, which extinguishes the right to sue,

and/or the right to appeal. Once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the Appellant.

22. When consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay. The Court considering an application under Section 5 of the Limitation Act may also look into the prima facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning.

23. It is true that the High Court has rejected the appeal on the misconceived ground that delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act is not condonable beyond 120 days by relying upon a two Judge Bench judgment of this Court in **N.V. International v. State of Assam and Ors.**², which has since been overruled by a three Judge Bench of this Court in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited**³.

24. Mr. Rana Mukherjee, Senior Advocate appearing on behalf of the Petitioners strenuously argued, and rightly, that the High Court had erred in holding that delay beyond 120 days in filing an appeal under Section 37 of the Arbitration and Conciliation Act was not condonable.

25. This Court is, however, not inclined to entertain this Special Leave Petition since the Petitioners have failed to show sufficient cause for the condonation of the inordinate delay of 337 days in filing the Appeal in the High Court. Moreover, there are no grounds for interference with the arbitral award impugned.

26. In the facts and circumstances of this case, we are not inclined to interfere with the impugned judgment and order of the High Court, dismissing the Appeal filed by the Petitioners.

The Special Leave Petition is accordingly dismissed.

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² (2020) 2 SCC 109

³ (2021) 6 SCC 460