

**Court No. - 1**

**Case :-** APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 619 of 2023

**Appellant :-** State Of U.P. And 5 Others

**Respondent :-** Rajveer Singh And Another

**Counsel for Appellant :-** C.S.C.,S.C.

**Counsel for Respondent :-** Poorva Agarwal,Punit Kumar Gupta

**Hon'ble Shekhar B. Saraf,J.**

1. Heard counsel appearing on behalf of the parties.
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 a substantial delay of four years in filing this appeal under Section 37 of the Act.
4. Counsel appearing on behalf of respondents relied upon a judgement in **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** to submit that such a delay in filing an appeal under Section 37 of the Act cannot be allowed. Relevant paragraph relied upon by counsel appearing on behalf of respondents 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."*

5. A coordinate Bench of this Court in **National Highway Authority of India Vs. Smt. Sampata Devi and Ors.** reported in **2023 (12) ADJ 787**, 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 NHA1 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."*

6. Upon a perusal of the above judgement, 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 present case, one does not find any such reason provided which would enable this Court to condone the delay.

7. In light of the same, the appeal is dismissed as barred by limitation.

**Order Date :- 18.3.2024**

Dev/-

**(Shekhar B. Saraf,J.)**