

**HIGH COURT FOR THE STATE OF TELANGANA**

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**I.A.No.1 of 2019**

**IN/AND**

**CIVIL MISCELLANEOUS APPEAL No.32 OF 2019**

Between:

Naveen P Malvay, s/o. late P.N.Malvay,  
Aged about 45 years, occu: Business,  
r/o. Plot No.2, Sarva Sukhi Colony,  
West Marredpally, Secunderabad  
and three others.

.... Petitioners/appellants

And

M/s. Samskruthi Shelters,  
A partnership firm with Regd.No.2 of 2006,  
Office at 12-5-55/1, Ground Floor,  
Samskruthi Heaven, Vijayapuri,  
Taranaka, Secunderabad, rep.by its  
Managing Partners, Mr. Srinivas Kodai  
And Mr. S.Ravinder Reddy.

.... Respondent/respondent

DATE OF JUDGMENT PRONOUNCED : 21.06.2022

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**&**

**HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

1. Whether Reporters of Local Newspapers : No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No  
see the fair copy of the Judgment ?

**\* HONOURABLE SRI JUSTICE P.NAVEEN RAO  
&  
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

**+ I.A.No.1 of 2019  
IN/AND  
CIVIL MISCELLANEOUS APPAL No.32 OF 2019**

% 21.06.2022

# Naveen P Malvay, s/o. late P.N.Malvay,  
Aged about 45 years, occu: Business,  
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Vs.

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A partnership firm with Regd.No.2 of 2006,  
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Samskruthi Heaven, Vijayapuri,  
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And Mr. S.Ravinder Reddy.

.... Respondent/respondent

!Counsel for the petitioners/ : Sri Unnam Muralidhar Rao  
appellants

Counsel for the Respondent : Sri M.Das Mahapatra

<Gist :

>Head Note:

? Cases referred:

(2021) 6 Supreme Court Cases 460  
(2021)6SCC 460  
(2020)2 SCC 11  
(2008)7 SCC 169  
(1962) 2 SCR 762

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**  
**AND**  
**HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU**

**I.A.No.1 of 2019**  
**IN/AND**  
**CIVIL MISCELLANEOUS APPAL No.32 OF 2019**

**COMMON JUDGMENT : (per Hon'ble Sri Justice P.Naveen Rao)**

The appellants are the landlords and the respondent is the builder. A Development Agreement is entered into by the appellants and respondent on the land belonging to the appellants to construct villas and also to create infrastructure for the purpose of villas project. Differences arose between them leading to availing the arbitration clause and reference of dispute to the Arbitrator. Before the Arbitrator, the parties have come to an understanding and entered into a settlement to resolve the *inter se* disputes. Recording the same the Arbitrator passed Award on 16.06.2015. However, for the misfortune of both contesting parties, the issues are not resolved. The appellants herein filed application under Section 9 of the Arbitration and Conciliation Act, 1996 in the Court of XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri, praying to grant an order of restraint from interfering with the peaceful possession and enjoyment of the petitioners by the respondent. On detailed consideration of the matter, the trial Court passed an order of *status-quo* in respect of possession over the petition schedule mentioned

property existing as on the date of filing of petition for a period of 90 days from the date of the order or till the filing of petition for enforcement of Ex.P.1 Award whichever is earlier.

2. The appellants herein filed E.P.No.615 of 2017 seeking enforcement of the Award, pending in the Court of VII Additional District and Sessions Judge, Ranga Reddy. The respondent filed E.P.No.819 of 2018 on 10.08.2018 in the Court of IV Additional District Judge, Ranga Reddy seeking enforcement of the very same Award. The Court is informed that both the E.Ps, are pending consideration of the respective Courts.

3. That being so, this appeal is filed challenging the status-quo order passed by the court below in A.O.P.No.262 of 2017. As there is delay of 435 days in preferring this appeal, the appellants filed I.A.No.1 of 2018 praying to condone the delay.

4. We have heard Sri Unnam Muralidhar Rao, learned counsel for the appellants and Sri M.Das Mahapatra, learned counsel for the respondent.

5. With reference to the issue of delay, learned counsel for the appellants sought to contend that in fact there is no delay. After the *status quo* order was granted, the appellants were in possession and recently, the respondent was trying to disturb their possession. Since the Court ordered maintenance of *status quo*, unless the order of

*status-quo* is clarified or modified, the interference continues compelling the appellants to file this appeal and therefore there is no delay. He would further submit that appellants are not trying to interject the process of arbitration proceedings. They are only seeking modification of the interlocutory order passed by the civil Court under Section 9 and in aid of enforcement of the Award. Therefore, the view expressed by the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs Borse Brothers Engineers and Contractors Private Limited***<sup>1</sup>, has no application and the appeal be considered on merits without regard to issue of delay. Unless the appeal is considered on merits, grave injustice would be caused to the appellants due to disturbance of possession held by them by the respondent, pending enforcement process before the competent Court.

6. *Per contra*, learned counsel for the respondent contends that if the prayer sought by the appellants is granted, it will create more serious complications. Further there is no recognition of possession in favour of the appellants and by means of filing the application, they are trying to gain back possession, which is otherwise, vested in the respondent. If what is contended by the appellants is true that they are in possession and in violation of *status-quo* order, if the respondent is interfering, the remedy for the appellants is to seek

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<sup>1</sup> (2021) 6 Supreme Court Cases 460

enforcement of the order passed by the lower court under Section 9 and not to file an appeal. He would further submit that the issue of possession cannot be decided by this Court in this appeal. In the facts of this case sufficient cause is not explained by the appellants. Therefore, the delay cannot be condoned.

7. The issue for consideration is whether delay in filing appeal under Section 37 of the Arbitration and Conciliation Act, 1996 can be condoned ?

8. Section 37 of the Act provides remedy of appeal against decision under Sections 9 and 34 etc. While Section 37 does not prescribe limitation, Section 34 which provides remedy to challenge the award stipulates limitation to avail such remedy. Section 37 is silent on time limit to avail the remedy of appeal. The Limitation Act is applicable to arbitration proceedings. In accordance with Articles 116 of the Limitation Act, limitation period is 90 days. As per Section 5 of the Limitation Act, delay in filing appeal can be condoned subject to satisfying the Court the '**sufficient cause**' for the delay. Therefore, the appellate Court is competent to condone the delay in filing if '**sufficient cause**' is shown for delay. However, the law is well settled that even when '**sufficient cause**' is shown, in arbitration matters, the width of the discretion of appellate Court to condone the delay is limited.

9. In **Government of Maharashtra (Water Resources Department) rep., by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited<sup>2</sup>**, the Hon'ble Supreme Court elaborately considered the application of Limitation Act, what is meant by '**sufficient cause**', and the scope of discretion to condone delay. The Hon'ble Supreme Court held:

"23. Section 37 of the Arbitration Act, when read with Section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under Section 37. This takes us to Articles 116 and 117 of the Limitation Act, which provide for a limitation period of 90 days and 30 days, depending upon whether the appeal is from any other court to a High Court or an intra-High Court appeal. There can be no doubt whatsoever that Section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of Section 43 of the Arbitration Act and by virtue of Section 29(2) of the Limitation Act.

24. This aspect of the matter has been set out in the concurring judgment of Raveendran, J. in Consolidated Engg., as follows:

42. The Arbitration and Conciliation Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The Arbitration and Conciliation Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings—both in court and in arbitration—under the Arbitration and Conciliation Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the Arbitration and Conciliation Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the Arbitration and Conciliation Act.

43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event,

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<sup>2</sup> (2021)6SCC 460

the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.”

(emphasis in original)

25.....It is settled that periods of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed. In *Boota Mal v. Union of India* [*Boota Mal v. Union of India*, (1963) 1 SCR 70 : AIR 1962 SC 1716], this Court referred to this aspect of the case, as follows : (SCR pp. 74-75 : AIR pp. 1718-19, para 4)

“4. ... Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in *Nagendra Nath Dey v. Suresh Chandra Dey* [*Nagendra Nath Dey v. Suresh Chandra Dey*, 1932 SCC OnLine PC 27 : (1931-32) 59 IA 283] and *General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim* [*General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim*, 1940 SCC OnLine PC 48 : (1939-40) 67 IA 416]. In the first case the Privy Council observed that : (*Nagendra Nath Dey case* [*Nagendra Nath Dey v. Suresh Chandra Dey*, 1932 SCC OnLine PC 27 : (1931-32) 59 IA 283], SCC OnLine PC)

‘... The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, ... the only safe guide.’

In the latter case it was observed that : (*Janmahomed Abdul Rahim case* [*General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim*, 1940 SCC OnLine PC 48 : (1939-40) 67 IA 416], SCC OnLine PC)

‘... a Limitation Act ought to receive such a construction as the language in its plain meaning imports. ... great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases’.”

**32.** Thus, from the scheme of the Arbitration Act as well as the aforesaid judgments, condonation of delay under Section 5 of the Limitation Act has to be seen in the context of the object of speedy resolution of disputes.

**43.** The next important argument that needs to be addressed is as to whether the hard-and-fast rule applied by this Court in *N.V. International [N.V. International v. State of Assam, (2020) 2 SCC 109 : (2020) 1 SCC (Civ) 275]* is correct in law. *Firstly*, as has correctly been argued by Shri Shrotri, *N.V. International [N.V. International v. State of Assam, (2020) 2 SCC 109 : (2020) 1 SCC (Civ) 275]* does not notice the provisions of the Commercial Courts Act at all and can be said to be per incuriam on this count. *Secondly*, it is also correct to note that the period of 90 days plus 30 days and not thereafter mentioned in Section 34(3) of the Arbitration Act cannot now apply, the limitation period for filing of appeals under the Commercial Courts Act being 60 days and not 90 days. *Thirdly*, the argument that absent a provision curtailing the condonation of delay beyond the period provided in Section 13 of the Commercial Courts Act would also make it clear that any such bodily lifting of the last part of Section 34(3) into Section 37 of the Arbitration Act would also be unwarranted. We cannot accept Shri Navare's argument that this is a mere casus omissus which can be filled in by the Court.

**55. *Reading the Arbitration Act and the Commercial Courts Act as a whole, it is clear that when Section 37 of the Arbitration Act is read with either Article 116 or 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, the object and context provided by the aforesaid statutes, read as a whole, is the speedy disposal of appeals filed under Section 37 of the Arbitration Act. To read Section 5 of the Limitation Act consistently with the aforesaid object, it is necessary to discover as to what the expression "sufficient cause" means in the context of condoning delay in filing appeals under Section 37 of the Arbitration Act.***

**56.** The expression "sufficient cause" contained in Section 5 of the Limitation Act is elastic enough to yield different results depending upon the object and context of a statute....

**58.** Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, ***the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims.*** This Court, in *Basawaraj v. LAO [Basawaraj v. LAO, (2013) 14 SCC 81]*, has held : (SCC pp. 85-88, paras 9-15)

"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 & Building Corpn. v. Bhutnath Banerjee* [Manindra Land & Building Corpn. v. Bhutnath Banerjee, AIR 1964 SC 1336] , *Mata Din v. A. Narayanan* [Mata Din v. A. Narayanan, (1969) 2 SCC 770], *Parimal v. Veena* [Parimal v. Veena, (2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24] .)

**59.** Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in *Postmaster General v. Living Media (India) Ltd.* [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] [“Postmaster General”], as follows : (SCC pp. 573-74, paras 27-29)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”  
(emphasis supplied)

10. On exercise of discretionary jurisdiction to condone delay, Hon'ble Supreme Court cautioned that in arbitration matters exercise of discretion is an exception and very limited. Hon'ble Supreme Court held:

**“63.** 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(1-A) 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.”

(emphasis supplied)

11. From various decisions of the Hon'ble Supreme Court, guidance can be taken as to what extent discretion can be exercised to condone the delay. Few of them are noted here under:

i) In **Union of India Vs. Varindera Constructions Limited**<sup>3</sup>, the

Hon'ble Supreme Court held as under:

**“3.** Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10-4-2013 [*Union of India v. Varindera Constructions Ltd.*, 2013 SCC OnLine Del 6511] has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the selfsame proceeding under Section 37 should be covered by the same drill.

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<sup>3</sup> (2020)2 SCC 11

4. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri* [*Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.”

ii) In **Borse Brothers** (supra), the Hon’ble Supreme Court was dealing with three civil appeals. In the civil appeal arising from Bombay and Delhi High Courts, both Courts refused to condone delay in filing appeals beyond 120 days. In another civil appeal arising from Madhya Pradesh High Court, the Madhya Pradesh High Court refused to follow **N.V.International** and followed **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Others**<sup>4</sup> and condoned the delay.

(a) In **Borse Brothers** (supra), the Hon’ble Supreme Court considered the scope of discretion to condone the delay and by relying on the earlier decision in **Ram Lal v. Rewa Coalfields Ltd.**<sup>5</sup>, held as under:

“62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.* [*Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 : AIR 1962 SC 361] as follows : (SCR p. 771 : AIR p. 365, para 12)

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a

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<sup>4</sup> (2008)7 SCC 169

<sup>5</sup> (1962) 2 SCR 762

condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14.”

(b) In **Borse Brothers** (supra), the Hon’ble Supreme Court considered whether 131 days delay is long. The Hon’ble Supreme Court held:

“**65.** Apart from this, there is a long delay of 131 days beyond the 60-day period provided for filing an appeal under Section 13(1-A) of the Commercial Courts Act. There is no explanation worth the name contained in the condonation of delay application, beyond the usual file-pushing and administrative exigency. This appeal is therefore dismissed.”

(c) In paragraph Nos.67, 68 and 69 dealing with other civil appeals, the Hon’ble Supreme Court considered delay of 75 days and 227 days. Paras 67 to 69 read as under:

“**67.** That apart, on the facts of this appeal, there is a long delay of 75 days beyond the period of 60 days provided by the Commercial Courts Act. Despite the fact that a certified copy of the District Court's judgment was obtained by the respondent on 27-4-2019, the appeal was filed only on 9-9-2019, the explanation for delay being:

“2. That, the certified copy of the order dated 1-4-2013 was received by the appellant on 27-4-2019. Thereafter the matter was placed before the CGM purchase MPPKVCL for the compliance of the order. The same was then sent to the law officer, MPPKVCL for opinion.

3. That after taking opinion for appeal, and approval of the authorities concerned, the officer-in-charge was appointed vide order dated 23-7-2019.

4. That, thereafter due to bulky records of the case and for procurement of the necessary documents some delay has been caused however, the appeal has been prepared and filed pursuant to the same and further delay.

5. That due to the aforesaid procedural approval and since the appellant is a public entity formed under the Energy Department of the State Government, the delay caused in filing the appeal is bona fide and which deserve[s] to be condoned.”

**68.** This explanation falls woefully short of making out any sufficient cause. This appeal is therefore allowed and the condonation of delay is set aside on this score also.

**69.** In the civil appeal arising out of SLP (C) Diary No. 18079 of 2020, there is a huge delay of 227 days in filing the appeal, and a 200-day delay in refiling. The facts of this case also show that there was no sufficient cause whatsoever to condone such a long delay. The impugned judgment of the High Court of Delhi dated 15-10-2019 [*Union of India v. Associated Construction Co.*, 2019 SCC OnLine Del 10797] cannot be faulted on this score and this appeal is consequently dismissed.”

12. From these decisions, it is apparent that while exercising discretion to condone the delay the Court is required to note whether ‘**sufficient cause**’ is made out and whether the ‘delay beyond the period provided to prefer the appeal is long’ having due regard to the primary objective of the Arbitration and Conciliation Act, 1996, i.e., speedy resolution of disputes.

13. Though Section 9 application was filed by the appellant, he is not happy with the *status quo* order passed by the lower Court and, therefore, challenges the same in this appeal. Appellants seek injunction restraining the respondent from disturbing their possession of subject property. In other words, appellants assert

their possession and seek a restraint order against respondent. This very issue was considered by the Court below and ordered *status quo* to be maintained for a limited period, i.e., for 90 days or till filing of Execution Petition, whichever is earlier.

14. This order was made on 12.07.2017. Appellants then filed E.P.No.615 of 2017. Thus, the *status quo* order was valid till date of filing of Execution Petition. Further, respondent also filed E.P.No.819 of 2018 on 10.08.2018. It appears no orders are passed in these E.Ps., and both E.Ps., are pending. One year after the impugned order and after filing of the E.Ps., this Appeal is preferred.

15. Fact remains, the appellants are not satisfied with the *status quo* order granted by lower Court and challenging the same in this Appeal.

16. Under Section 37 of the Act, appeal has to be preferred within 90 days, whereas this appeal is preferred with a delay of 435 days.

17. In paragraph no.3 of the affidavit filed in support of the I.A., appellants sought to contend that for them cause of action arose recently when respondent sought to interfere with their possession. The cause of action to prefer appeal against order of lower Court arises only when an order is made, but not when some adverse action alleged to have been taken by opposing party subsequently. Except asserting that respondent started interfering compelling them to file

the appeal, no cogent reason is assigned for delay in filing appeal. The allegation of interference cannot amount to showing sufficient cause. The averments are general in nature, made casually. The appellants seem to assume as a matter of right to seek condonation of delay. When the delay is long, the burden is heavy on the applicant to assign detailed reasons to the satisfaction of the Court. The reasons assigned by the applicant are not to the satisfaction of the Court. More so, having regard to the objects of the Act, 1996. The delay of 435 days is too long to exercise discretion. No case is made out to condone long delay of 435 days.

18. The Application is dismissed. Consequently, C.M.A.No.32 of 2019 is also dismissed. However, no order as to costs. Pending miscellaneous petitions, if any, shall stand dismissed.

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**JUSTICE P.NAVEEN RAO**

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**JUSTICE SAMBASIVARAO NAIDU**

Date: 21.06.2022  
*Rds/kkm*

**HONOURABLE SRI JUSTICE P.NAVEEN RAO  
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