

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 89 of 2024 (**Leading**)

Appellant :- Executive Engineer Drainage Division

Respondent :- Ms Ayush Construction And Another

Counsel for Appellant :- Dr. D.K. Tiwari, Kunal Ravi Singh

Counsel for Respondent :- Ritesh Singh, Suresh Singh

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 90 of 2024 (**Connected-C1**)

Appellant :- Executive Engineer Drainage Division

Respondent :- Ms Aman Infracon And Another

Counsel for Appellant :- Dr. D.K. Tiwari, Kunal Ravi Singh

Counsel for Respondent :- Ritesh Singh, Suresh Singh

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 92 of 2024 (**Connected-C2**)

Appellant :- Executive Engineer Drainage Division

Respondent :- Ms Raghuvansh Enterprises (Partner Mr. Anand Kumar Mishra) Prabha Compound And Another

Counsel for Appellant :- Dr. D.K. Tiwari, Kunal Ravi Singh, Suresh Singh

Counsel for Respondent :- Ritesh Singh

With

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 93 of 2024 (**Connected-C3**)

Appellant :- Executive Engineer Drainage Division

Respondent :- Ms Raghuvansh Enterprises And Another

Counsel for Appellant :- Dr. D.K. Tiwari, Kunal Ravi Singh

Counsel for Respondent :- Ritesh Singh, Suresh Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

In Re: Delay Condonation Application No. 2 of 2024

1. Heard Dr. Devendra Kumar Tiwari, learned Additional Chief Standing Counsel for the appellants and Sri Suresh Singh, learned counsel for the respondents-claimants.

2. Since common issues are involved in the leading as well as connected appeals, thus, they are being decided by a common and composite order.

3. For the sake of clarity, Arbitration Appeal No. 89 of 2024 is treated as leading appeal, Arbitration Appeal No. 90 of 2024 is treated as connected-C1 appeal, Arbitration Appeal No. 92 of 2024 is treated as connected-C2 appeal and Arbitration Appeal No. 93 of 2024 is treated as connected-C3 appeal.

4. The present appeals purported to be under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'Act 1996') have been preferred along with a delay condonation application supported by affidavit for condoning the delay in preferring the appeals questioning the order of the Commercial Court, Gorakhpur rejecting the applications under Section 34 of the 1996 Act for setting aside of the award.

5. A chart recapitulating the details of the cases is being quoted hereinunder:-

Arbitration Appeal No.	Date of Award	Date of filing of Application under Section 34 of 1996 Act	Date of decision of Section 34 under 1996 Act	Date of presentation of appeal under Section 37 of 1996 Act	Period of delay in preferring appeal under Section 37 of 1996 Act	Amount awarded
89 of 2024 (Leading)	18.2.2017	19.11.2021	8.6.2022	11.3.2024	513	33,13,109/- with 4% interest
90 of 2024 (connected-C1)	18.2.2017	19.11.2021	8.6.2022	12.3.2024	513	39,19,379/- with 4% interest
92 of 2024 (connected-C2)	18.2.2017	19.11.2021	8.6.2022	11.3.2024	513	24,14,915/- with 4% interest
93 of 2024 (connected-C3)	18.2.2017	19.11.2021	8.6.2022	11.3.2024	513	21,42,435/- with 4% interest

6. Dr. D.K. Tiwari, learned Additional Chief Standing Counsel who appears for the appellants on the strength of the averments contained in the

delay condonation application submits that the delay caused in filing the appeals is unintentional, bona fide and due to procedural formalities and since the award itself is illegal, thus, this Court may condone the delay and hear the appeals on merits.

7. Sri Suresh Singh, learned counsel for the claimants-respondents while countering the submission of the learned State Counsel for the appellants submits that the explanation given in the delay condonation application for condoning the delay is neither satisfactory nor conceivable particularly in view of the fact that challenging the award dated 18.2.2017 of the learned Arbitrator, application under Section 34 of the 1996 Act was filed before the Commercial Court, Gorakhpur after an enormous and un-explained delay of more than four years, nine months and after rejection of the said application on 8.6.2022 time barred appeals have been preferred before this Court.

8. We have heard the learned counsel for the parties and perused the material available on record.

9. Record reveals that the Arbitrator had pronounced the award on 18.2.2017, an application under Section 34 of the 1996 Act was preferred after a period of more than four years, nine months before the Commercial Court, Gorakhpur on 19.11.2021 which came to be rejected on 8.6.2022. As per the averments contained in the delay condonation application legal opinion was sought on 6.8.2022 from the office of the Chief Standing Counsel, High Court, Allahabad. After obtaining the legal opinion, the Executive Engineer Drainage Division, Siddharthnagar, appellant had sent a letter dated 24.8.2022 to the Superintending Engineering, Gandak Flood Circle, District Basti seeking permission for taking appropriate follow up action. On 13.9.2022, Superintending Engineer, Gandak Flood Circle Basti wrote a letter to the Chief Engineer, Gandak (Irrigation Department and Water Resource Department, U.P., Gorakhpur) for obtaining permission to file arbitration appeals. Thereafter, correspondence was made by Chief Engineer, Gandak (Irrigation and Water Resource Department, U.P., Gorakhpur with Chief Engineer Level-1 (East) Irrigation and Water Resource Department, U.P., Gorakhpur vide letter dated 29.9.2022 for obtaining permission for filing appeals from the State Government. Further correspondences were made on 19.10.2022 and thereafter, on 8.12.2023 permission was granted to file appeals and the Executive Engineer, Drainage, Siddharth Nagar, appellant sent a letter to the Chief Standing Counsel, High Court on 6.1.2024 for filing arbitration appeals and thereafter, the concerned officers contacted the office of Standing Counsel on 8.1.2024 and the appeals has been preferred.

10. Perusal of the explanation taken in the delay condonation application seeking condonation of delay in the opinion of the Court is nothing but a

usual, stereotype explanation with respect of placing the files from one desk to another in a routine manner. There is nothing on record to suggest that due diligence was exercised to ensure filing of the appeals within the time provided under the statute. It is also not the case of the appellant that they were not aware about the passing of the award at the first instance and rejection of the application under Section 34 of the 1996 Act as the appellants were represented before both the forums. An additional factor also needs to be noticed that in all the cases the application under Section 34 of the 1996 of the Act was preferred after approximately four years, nine months and once the same being an undisputed position, it is highly inconceivable that the appellants were not aware about the fact that appeals were to be preferred with due promptness as per the limitation provided under the statute.

11. Hon'ble Apex Court in the case of State of ***Madhya Pradesh & Others Vs. Bherulal 2020 (10) SCC 654*** had the occasion to consider the issue with regard to filing of appeals without any reasonable cause after stipulated period and went on to observe as under:-

“6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

12. Yet in another decision emanating from the proceedings purported to be under Section 37 of the 1996 Act wherein similar defence was sought to be taken by the State in preferring appeal beyond the statutory period the Hon'ble Apex Court in the case of ***State of Uttar Pradesh & Others Vs. M/s.***

Satish Chandra Shivhare & Brothers 2022 Live Law (SC) 430 held as under:-

“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.

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.”

13. Even otherwise also the appellants have no case particularly when as per Section 34(3) of the 1996 Act the limitation period for preferring an application challenging the award of the arbitrator is 90 days with a grace period of further 30 days only.

14. Here, as already noticed in the appeals in question, the application preferred under Section 34 of the 1996 Act was after an approximate period of four years, nine months, thus, in view of the judgment in the case of ***Bhimashankar Sahakari Sakkare Karkhane Niyamita Vs. Walchandnagar Industries Ltd. (Wil) 2023 (8) SCC 453*** the delay cannot be condoned. The Hon'ble Apex Court observed as under:- -

“54. Now, so far as the submission on behalf of the appellant that the appellant that the Limitation Act shall not be applicable to the proceedings under the Arbitration Act is concerned, the aforesaid has no substance. Section 43(1) of the Arbitration Act specifically provides that the

Limitation Act, 1963 shall apply to arbitrations as it applies to proceeding in Court. However, as observed and held by this Court in Assam Urban², the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in Section 34(3) of the Arbitration Act.

55. In Popular Construction Co., when Section 5 of the Limitation Act was pressed into service to proceedings under Section 34 of the Arbitration Act for setting aside the arbitral award, this Court has observed that the Arbitration Act being a special law and provides a period of limitation different from that prescribed under the Limitation Act, the period of limitation prescribed under the Arbitration Act shall prevail and shall be applicable and to that extent the Limitation Act shall be excluded. That, thereafter, it is observed and held that application challenging an award filed beyond period mentioned in Section 34(3) of the Arbitration Act would not be an application "in accordance with" sub-section (3) as required under Section 34(1) of the Arbitration Act.

56. In Hindustan Construction Co., in fact this Court has emphasised the mandatory nature of limit to the extension of period provided in the proviso to Section 34(3) and has held that an application for setting aside an arbitral award under Section 34 of the Arbitration Act has to be made within time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter."

15. Consequently, the delay condonation application for condoning the delay in filing the appeals is **rejected**.

16. Though while rejecting the delay condonation application seeking condonation of delay in filing the appeals, the Court would have closed the chapter, however, the Court finds that the proceedings have been conducted in reckless manner which is other than bona fide. The explanation set forth in filing time barred appeals as well as in preferring application under Section 34 of the 1996 Act does not inspire confidence as the grounds taken for condonation of delay are thoroughly insufficient. Since the matter involves monetary aspects that too from State Exchequer, thus, promptness and diligence was required not only at the stage of filing of application under Section 34 of the 1996 Act for setting aside of the award but also at the stage of preferring present appeals before this Court. Since the bona fides are lacking which not only needs to be checked but introspection is to be made at the level of the officers and the functionaries of the State Government who are on the helm of the affairs.

17. Accordingly, Principal Secretary/Additional Chief Secretary, Irrigation, Uttar Pradesh is directed to conduct an inquiry with regard to the lapses committed by the erring officers/employees who were under

responsibility to prosecute the proceedings and consequently to take action strictly in accordance with law.

18. The aforesaid exercise shall be completed within a period of four months from the date of communication of the order.

19. A compliance report shall be submitted to the Registrar General of the High Court within the same period.

20. Dr. D.K. Tiwari, learned Additional Chief Standing Counsel who appears for the appellants shall communicate the order passed today to the concerned.

21. The Registrar General shall also communicate the order to the concerned for its compliance.

Order on Appeals

Since by a separate order passed today, the delay condonation application No. 2 of 2024 has been rejected consequently, all the appeals stand dismissed.

Order Date :- 15.3.2024

Rajesh

(Vikas Budhwar, J.)

(Arun Bhansali, C.J.)