

HIGH COURT OF TRIPURA
AGARTALA

IA 03 OF 2023 IN ARB. A 01 OF 2023

1.The State of Tripura, represented by the Secretary Public Works Department, PN Complex, Gurkhabasti, Agartala, West Tripura.

2.The Executive Engineer, Resource Division, Panchamukh, A.D. Nagar, Agartala-799003, West Tripura.

....**Applicant-Appellants.**

Vrs.

Jain Irrigation System Ltd., Contractor, Jain Plastic Park, PO Box No.72, NH No.6, Bambhori, Jalgaon, Maharastra, PIN-425001.

....**Respondent.**

Present:

For the applicant-
appellants : Mr. D. Bhattacharya, G.A.
Mr. Karnajit De, Addl. G.A.

For the respondent : Mrs. S. Deb (Gupta), Advocate.
Ms. Rumpa Dey, Advocate.

Date of hearing : **03.08.2023**

Date of delivery of
judgment & order : **29.08.2023**

Whether fit for reporting : Yes

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR.JUSTICE ARINDAM LODH

JUDGMENT & ORDER

[*Arindam Lodh, J.*]

This is an application under Section 5 of the Limitation Act,1996 for condoning the delay of 74 days in preferring the Commercial Appeal under Section 13(1A) of the Commercial Courts Act,2015 against the judgment dated 19.11.2022, passed by the learned District Commercial Court, West Tripura, Tripura in Civil Misc (Arbitration) 08 of 2020.

2. Facts of the case of the applicant/appellants (here-in-after referred to as the applicants) in a nutshell, are that the respondent-contractor

had entered into a contract with the Executive Engineer, Resource Division, Panchamukh, Agartala for the purpose of procurement of UPVC pipes of different diameter and pressure for PHE and MI Scheme in Tripura during the year 2002-2003. The respondent being the lowest bidder of the Notice Inviting Tender dated 17.06.2002, supply orders were issued to execute the said contract. Accordingly, the respondent in course of execution of the said supply order had engaged one transport contractor to carry those materials as per supply order by truck vehicle, but the transporter carried the same by rail from Jalgaon to Guwahati instead of truck vehicle which caused a delay of two days and on that ground the applicants herein reduced the agreed rate between 9.82 to 10.5 per cent in all categories and thereby made less payment of Rs.23.01 lakhs. Thereafter, an Arbitrator was appointed to decide the dispute by the order of this High Court and accordingly, learned Arbitrator has decided the case with the following terms:

“In the result, it is decided and/or held that the petitioner is entitled to an amount of Rs.13,82,575/- with 9% simple interest thereon with effect from 04.07.2007. The respondent shall pay the amount to the petitioner with interest within 45(forty five) days of the date of award failing which, it shall carry penal interest @ 12% P.A. with quarterly rests, w.e.f. 04.07.2007.

The respondent shall further pay to the petitioner costs of arbitration including that of petitioner's part of Arbitrator's fees i.e. total Rs.1,46,449/-. That payment also shall be made within 45 days from the date of award failing which, it shall also carry interest @ 12% P.A. with effect from the date of award.

Further, the petitioner since paid the respondent's part of Arbitrator's fees of Rs.1,21,449/- on 17.03.2020, the respondent shall pay back the amount to the petitioner with 12% interest with quarterly rests w.e.f. 17.03.2020 till the amount is paid. If the respondent fails to make the payment within 30 days from the date of award, the petitioner will be at liberty to realize/recover the amount from the respondent with 18% interest w.e.f. 17.03.2020 in accordance with law. The interest part shall be the personal liability of the concerned Chief Engineer, PWD(WR) and the authority of the respondent shall realize the amount (interest part) from the salary etc. of the concerned Chief Engineer, PWD(WR) in due course.”

3. Being aggrieved, the applicants herein, had preferred an appeal against the said Arbitral award before the learned Commercial Court, West Tripura, Agartala under Section 34 of the Arbitration and Conciliation Act whereby, the learned Commercial Court set aside the Arbitral award partly and upheld the remaining part of the award.

4. Having dissatisfied with the order of learned Commercial Court, the applicants herein, preferred the instant condonation application with a prayer for condoning delay of 74 days in preferring the connected appeal. Section 13(1A) of the Commercial Courts Act, 2015 prescribes a limitation of 60(sixty) days for preferring an appeal from the date of judgment or order. It also provides that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

5. In the instant application, the applicants have explained the reasons for causing delay in preferring the connected appeal stating *inter alia* that the impugned judgment was passed on 19.11.2022 and after passing of the said judgment, they applied for certified copy on 23.11.2022, which was delivered on 30.01.2023. On receipt of the certified copy, learned Addl. Govt. Pleader on 14.02.2023 had sent the file to the Executive Engineer Resource Division with opinion to prefer an appeal. Thereafter, the Executive Engineer, Resource Division sent the file to the office of the Chief Engineer PWD(WR) on 22.02.2023 for getting opinion of the Law Department. Thereafter, 22.02.2023, the file was sent to the Nodal Officer, Legal Cell for further

course of action. On 24.02.2023, the Nodal Officer again sent the file to the Chief Engineer, PWD(WR) for sending the file to the Law Department for getting opinion and accordingly, on 26.02.2023, the Secretary PWD sent the file to the Law Department. On 03.03.2023, the file was sent to the Secretary PWD from the Law Department with opinion. Thereafter, on 07.03.2023, the file was sent to the Nodal Officer for further course of action. The Nodal Officer on 13.03.2023, sent the file to the learned Government Advocate and on 17.03.2023 marked the file to Addl. Government Advocate for preferring appeal. On 20.03.2023, after drafting of the Arbitration Appeal the file was sent to the Nodal Officer for getting the Arbitration Appeal vetted from the Law Department and on that day itself, the Nodal Officer sent the file to the Chief Engineer PWD(WR) for further course of action and accordingly, the Chief Engineer PWD(WR) sent the file to the Secretary PWD on 20.03.2023 for sending the same to the Law Department. On 24.03.2023 after vetting the file was sent to the Secretary PWD for further course of action. Thereafter, on 28.03.2023, the Chief Engineer PWD (WR) sent the file to the Addl. Government Advocate for filing of the appeal which was received by the office of learned Government Advocate on 29.03.2023.

6. The applicants contended that the connecting appeal ought to have been filed on or before 18.01.2023, but, due to inter departmental movement of the file, 74 days delay had been occurred and hence, the statutory period of filing the appeal was expired. It is further urged that the said delay was beyond the control and was not intentional.

7. Mr. D. Bhattacharya, learned Government Advocate assisted by Mr. K. De, learned Addl. G.A. appearing for the applicants at the time of

hearing submitted that there were no deliberate laches on the part of the applicants in preferring the appeal and the delay of 74 days has been caused due to the bonafide reasons. Mr. Bhattacharya, learned G.A. further submitted that unless the delay is condoned, the applicants shall suffer irreparable loss. So, the delay should be condoned for fair ends of justice.

8. Mrs. S. Deb(Gupta), learned counsel appearing for the respondent-contractor opposing the submission of learned G.A. contended that the learned District Commercial Court passed the impugned judgment and order on 19.11.2022 which was undoubtedly within the full knowledge of the learned counsel of the applicants. She further submitted that the learned counsel for the applicants had applied for the certified copy of the impugned judgment on 23.11.2022 and on 30.01.2023, the certified copy of the impugned judgment was received by the learned counsel of the applicants. Mrs. Deb (Gupta), learned counsel again strongly argued that from the note of the Copying Department, it was revealed that the learned counsel for the applicants had provided the requisite stamps and folios before the Copying Department on 08.12.2022 and consequently on 09.12.2022 the certified copy was ready for delivery. Accordingly, she stressed upon her submission that there is no explanation from 09.12.2022 to 30.01.2023 i.e. for 51 days delay. According to learned counsel, the applicants have not acted with due diligence pursuing the appeal and the application for condonation of delay does not assign satisfactory explanation to condone such delay and as such, the same should be dismissed.

9. We have heard learned counsel for the parties and meticulously gone through reasons assigned in the application for condonation of delay and

the written objection filed the respondent. It is apparent from the contention raised by the applicants in the application that the impugned judgment and order was passed on 19.11.2022 and they had applied for obtaining certified copy of that judgment on 23.11.2022. But, they collected the certified copy of the impugned judgment on 30.01.2023, though, at the time of argument, Mrs. Deb (Gupta), learned counsel for the respondent in conformity with the statement made in the the counter affidavit candidly submitted that from the note of the Copying Department, it was revealed that on 08.12.2022, learned counsel for the applicants had provided the requisite stamps and folios before the Copying Department and on 09.12.2022 the certified copy was ready for delivery. It is clear that there is no cogent reason as to why they could not collect the certified copy of the impugned judgment during the period from 09.12.2022 to 30.01.2023 i.e. within 51 days. There is no explanation what prevented the applicants for not collecting the certified copy within the said 51 days. So, we do not find any justified reasons to allow the petition for condonation of delay even on merit, since the grounds stated for condonation of delay can in no way be termed as 'sufficient cause' and at least such reason for the delay in pushing the file from one office to other office cannot be regarded as 'sufficient cause' to convince the Court for the purpose of condoning the delay. In that context, the applicants, in our considered opinion, were grossly negligent for inaction on their part which suffers from lack of bona fides and the reason for the delay assigned in the application cannot be said to be a cogent reason or "sufficient reason" in filing the appeal in time. This can be said in one sense a deliberate negligence on the part of the counsel

or litigant which has taken note of by this court. We may unhesitantly hold that the applicants had enough lackadaisical attitude to pursue the appeal.

10. A Division Bench of this court comprising both of us has dealt with and decided similar issue in *IA No.02/2022 in Commercial App. No.1 of 2023*, titled as *Hindustan Steelworks Construction Ltd. Vrs. The State of Tripura & Ors.*

11. Added to it, what have been observed here-in-above, the objectives of the establishment of Commercial Courts are required to be fulfilled by the beneficiaries of the Act. The Act is to provide for speedy disposal of high value commercial disputes involving complex facts and questions of law. It was aimed at early resolution of commercial disputes which would definitely create a positive image to the investors across the world as regards the independent and responsive Indian legal system. In the Statement of Objects and Reasons of Amendment Act 28 of 2018, it is clearly stated that the global economic environment has since become increasingly competitive and to attract business at international level, India needs to further improve its ranking in the World Bank 'Doing Business Report' which, *inter alia*, considers the dispute resolution environment in the country as one of the parameters for doing business. It was further observed by the legislature that the tremendous economic development had ushered in enormous commercial activities in the country including foreign direct investments, public private partnership, etc., which had prompted initiating legislative measures for speedy settlement on commercial disputes, widen the scope of the courts to deal with commercial disputes and facilitate ease of doing business.

12. To fulfill and achieve the objects, the parties approaching the Commercial Courts to resolve their disputes arising out of business/trade, etc., transactions, must adhere to the procedures laid down as embodied in the Act.

Keeping in view of the objectives of the Commercial Courts Act, the provision prescribing limitations has marked a distinction to that of the provisions laid down in the Limitation Act, 1963.

13. In view of this, the litigants participating in commercial disputes under the Commercial Courts Act must be vigilant to the procedures mentioned in the Act itself. We may recollect that the law of limitation gets its root in two Latin maxims, one of which is '*Vigilantibus et Non- Dormientibus Jura Subvenieunt*' which means that the law will assist only those who are vigilant about their rights and not those who sleep over them. The above maxims are clearly applicable to consider the prayer for condonation filed by any of the parties to the disputes under the Commercial Courts Act. So, according to us, an application for condonation of delay under Section 5 of the Limitation Act in filing appeals arising out of commercial suits must be considered in the context of the object of speedy resolution of disputes. In other words, considering the object, the legislature wanted to achieve, i.e. for speedy disposal of commercial suits, 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, may be condoned by way of exception and not by way of rule. It is also to be kept in mind that Commercial Courts Act, 2015 is a special law and the Limitation Act is a general law.

14. In view of the above factual and legal positions, we are of the opinion that the applicants have failed to explain the sufficient cause for condonation of delay of 74 (seventy four) days in preferring the appeal after expiry of statutory period. The period of delay of 74 (seventy four) days in preferring the appeal is not found to be reasonable and thus, cannot be said to be a short delay.

15. Accordingly, the instant condonation application (IA No.03/2023) stands dismissed. Consequently, the Arbitration Appeal 01/2023 shall also stand dismissed. Pending application(s), if any, also stands dismissed.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ

SANJAY GHOSH

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