

**HIGH COURT OF TRIPURA
AGARTALA**

REVIEW PET. 45 OF 2023

Hindustan Steelworks Construction Limited

[A Government of India Undertaking], Tripura Unit, having its
Office at Jackson Gate Building, 3rd Floor, Lenin Sarani,
Agartala, Pin 799001.

....Petitioner/applicant.

Vrs.

1.The State of Tripura,

(represented by the Secretary PWD)
Secretariat, Capital Complex,
P.O. Kunjaban, Agartala.

2.Director, Urban Development Department,
Government of Tripura,
Agartala

....Proforma-respondents.

3.Sri Dilip Kumar Kar,

S/o Late Makhan Lal Kar,
Resident of Agartala-Assam Road.
Math Chowmohani, P.O. Dhaleswar,
P.S.-East Agartala, Agartala, West Tripura.

... Respondent-Opposite Party.

Present:

For the

Petitioner/applicant : Mr. Jit Roy, Advocate.

For the State-respondents : Mr. K. De, Addl. G.A.

Date of hearing & delivery
of judgment & order : **05.10.2023**

Whether fit for reporting : Yes

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

JUDGMENT & ORDER

Heard learned counsel for the review petitioner and the State.

2. The instant petition seeks review of the judgment and order dated 4th July, 2023, passed in I.A. 02 of 2022 in Commercial Appeal No.01 of 2023 by this Court, whereby the Commercial Appeal preferred by the review petitioner was dismissed as being barred by limitation. The operative part of the judgment is quoted hereunder:

“7. We have heard learned counsel for the parties. We have also taken note of the explanation or cause sought to be showed by the petitioner/appellant-Company for condonation of delay of 101 days. Be it

indicated here that before the learned Commercial Court, the present appellant was defendant in the instant Commercial Suit No.10/2016 and was the plaintiff in Commercial Suit No.06/2016 against the same party i.e. the private respondent herein. The suit (Commercial Suit No.10/2016) was decreed partly on contest in favour of the plaintiff/private respondent herein. The common judgment of the learned Commercial Court was delivered on 16.02.2022. The limitation for preferring an appeal as prescribed under Section 13(1-A) is sixty days from the date of the judgment or order. The appellant applied for obtaining the certified copy of the judgment only on 16.06.2022, which was finally collected on 28.06.2022 after it was ready on 27.06.2022. By that time itself, the appeal was barred by delay. Even if the period of limitation is reckoned excluding the period of 90 days from 28.02.2022 in view of the order passed by the Apex Court in *Suo Motu WP(C) No.03/2020*, the appeal has been filed after 101 days thereof. The law in this regard has been well settled by the decision of the Apex Court in the case of **Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited** reported in (2021) 6 SCC 460. The Apex Court has considered the interplay of the Commercial Courts Act, 2015 with the provisions of Section 37 of the Arbitration and Conciliation Act, 1996 as amended and Section 5 of the Limitation Act read with Article 116 and 117 of the Schedule attached thereto and held as under at Para 63 thereof which is reproduced hereunder:

“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.”

8. It is not in dispute that the appeal has not been filed within the 60 days period. The appeal has been preferred after 101 days beyond the period of limitation of 60 days. The instant appeal does not arise from an award passed under the Arbitration and Conciliation Act, 1996 and, therefore, no question of applying the logic of 90 days as under Section 37(3) of the Arbitration and Conciliation Act, 1996 would arise. However, it may also be noted that the Apex Court, in the case of *Borse Brothers* (supra), has also held at Para 43 that the decision rendered by the Apex Court in *N.V. International v. State of Assam and others* reported in (2020) 2 SCC 109 did not notice the provisions of the Commercial Courts Act and can be said to be per incuriam on this count. Secondly, it is correct to note that the period 90 days plus 30 days and not thereafter mentioned in Section 34(3) of the Arbitration and Conciliation Act cannot now apply, since 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 and Conciliation Act, 1996 would also be unwarranted. The Apex Court in the case of Borse Brothers (supra), therefore, rejected the argument that a mere casus omissus which can be filled in by the Court cannot be expected. However, as observed hereinabove, the instant appeal arises purely from a Commercial Suit; and reckoning the period of 60 days of limitation prescribed under Section 13(1-A) thereof, the appeal is grossly barred by delay.

9. *The appellant has sought to explain the initial delay in making an application for obtaining the certified copy of the impugned judgment on 13.05.2022 attributable to the erstwhile learned counsel. By that time itself, the limitation of 60 days had expired. If the extended period of limitation under the orders passed by the Apex Court in Suo Motu WP(C) No.03/2020 is counted till 28.05.2022, the certified copy of the judgment was received only on 30.05.2022 and reckoning the period from 30.05.2022 also, the appellant has not been able to show sufficient cause for condonation of the gross delay of 101 days thereafter. The narration of the events in the delay condonation petition only shows that the appellant-Company was consuming time at its own sweet will in taking decisions on the question of filing of the appeal or preparation of the memo of appeal, discussion on issues raised by the learned counsel for the appellant-Company, being completely oblivious of the rigors of the limitation provided under Section 13 (1-A) of the Commercial Courts Act, 2015 in view of the judgment rendered by the Apex Court in Borse Brothers (supra). No exception can be made on the ground that the appellant is an instrumentality of the State as has also been specifically observed by the Apex Court in the above case. The rigors of the law, therefore, have to operate in full force. The appellant having failed to explain sufficient cause for condonation of delay of 101 in preferring the memo of appeal, this Court is of the considered view that no exception can be made in such matters relating to appeals arising out of the Commercial Courts Act, 2015 in view of the categorical judgment of the Apex Court in the case of Borse Brothers (supra).*

10. *As such, the delay condonation application (IA No.02/2022) is dismissed. Consequently, the Commercial App. No.01/2023 also stands dismissed.*

Pending application(s), if any, stands disposed of.”

3. Learned counsel for the petitioner submits that the delay in filing the appeal was on account of non-availability of Category Code for filing Commercial Appeal in this Court. This fact, however, was not taken in the application for condonation of delay preferred along with the Commercial Appeal. This Court would, therefore, be indulgent to treat the explanation

urged herein as a ‘*sufficient reason*’ as per Order 47, Rule 1 of CPC to review the impugned judgment as otherwise the appellant/review petitioner herein would suffer irreparably. Learned counsel for the petitioner has tried to draw our attention to the merits of the findings of the learned Commercial Court to impress that they suffer from serious errors in appreciation of the case of the parties as borne out from the pleadings and evidence on record and also from serious errors of law. Therefore, the review petition may be allowed in the interest of justice.

4. We have considered the submissions of learned counsel for the petitioner and taken note of the grounds urged in the instant review petition. The grounds for review are enumerated under Order 47, Rule 1 of CPC which is quoted hereunder:

“1. Application for review of judgment - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

1[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

5. The review petitioner does not contend that the instant plea if at all a tenable plea to explain the delay, was not within its knowledge despite

due diligence at the time of filing of the Commercial Appeal and the delay condonation application. Apart from that, we are otherwise also not satisfied that the plea relating to non-availability of Category Code for filing Commercial Appeal has resulted in delay in filing the Commercial Appeal. It goes without saying that in urgent matters where the limitation is going to expire, the parties are permitted to file even at the eleventh hour to save the appeal from being barred on grounds of limitation. Apparently, the ground is not tenable and appears to be an ingenuous novel ground to get over the rigors of the Order 47, Rule 1 of CPC and the ratio rendered by the Apex Court in the case of *Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vrs. Borse Brothers Engineers and Contractors Private Limited*, reported in (2021)6 SCC 460 relying upon which the Commercial Appeal was dismissed as being barred by delay of 101 days whereas, the period of limitation prescribed under Section 13(1A) of the Commercial Courts Act is only 60 days. Apart from what has been held hereinabove, learned counsel for the petitioner has not been able to show that the impugned judgment suffers from any errors apparent on the face of record. As such, we do not find any grounds to review the impugned judgment and order.

The instant review petition stands dismissed. Pending application(s), if any, stands disposed of.

(ARINDAM LODH),J

(APARESH KUMAR SINGH),CJ