

GAHC010125112019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2548/2019

THE BRAHMAPUTRA BOARD AND 2 ORS.
REP. BY THE CHAIRMAN, BRAHMAPUTRA BOARD, BASISTHA,
GUWAHATI- 781029.

2: THE CHIEF ENGINEER (I.W)

BRAHMAPUTRA BOARD
BASISTHA
GUWAHATI- 781029.

3: THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF WATER RESOURCES RIVER DEVELOPMENT AND GANGA
REJUVENATION
NEW DELHI-110001

VERSUS

M/S. C. C. CONSTRUCTION
REP. BY SHRI SUDHIR CHOUDHURY, 5006, RAMKUMAR ARCADE, 4TH
FLOOR, CHATTRIBARI ROAD, GUWAHATI- 781001.

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : MR. R HUSSAIN

Linked Case :

THE BRAHMAPUTRA BOARD AND 2 ORS

VERSUS

M/S C.C CONSTRUCTION

Advocate for :

Advocate for : appearing for M/S C.C CONSTRUCTION

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 22.05.2023

Heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, appearing for the applicants. Also heard Mr. A.A. Ahmed, learned counsel appearing for the sole respondent.

2. The applicants have preferred an arbitration appeal under Section 37 of Arbitration and Conciliation Act 1996(hereinafter for brevity as Arbitration Act, 1996) against the judgment and order dated 26.11.2018 passed by the learned Additional Sessions Judge No.2, Kamrup(M), Guwahati in Misc. Arbitration Case No. 11/2015 and in preferring the arbitration appeal there was delay of 96 days as on 30.05.2019 and this application was filed praying for condoning the delay in preferring the connected arbitration appeal.

3. The case of the applicants is that after judgment has been passed, the applicants accordingly obtained certified copy of the order dated 26.11.2018 on 15.05.2019 from Sri S.C. Keyal, Asstt. Solicitor General of India, Gauhati High Court. The appeal petition was filed by Brahmaputra Board before the Court of District and Sessions No. 1 on 03.03.2015 through Ms. Babita Das, Ex-CGC. After expiry of enrolment of Ms. Babita Das as CGC, Ms. Anupama Dass, CGC was engaged by the Assistant Solicitor General of India, Gauhati High Court to

carry on the case. After completion of the arguments of the case, Ms. Dass informed Brahmaputra Board due to her new assignment, she has returned the file of the case to the Asstt. S.G.. While legal cell people of Brahmaputra Board enquired the case in the office of the District Judge No.1, Kamrup(M) on 04.10.2018, it was informed from the office that the case came for hearing on 27.09.2018 and the same was transferred to the Additional Sessions Judge No.2, Kamrup(M) and the case was fixed for hearing on 12.10.2018. Accordingly, legal cell people tried to find out the record of the case in the office of the Additional Sessions Judge No. 2 (Kamrup) but could not find any record. Therefore, the Asstt. S.G., Gauhati High Court was requested to engage a new lawyer for the case.

4. It is further stated in the petition that the Brahmaputra Board did not receive any information from the Asstt. S.G., Gauhati High Court. When asked, Brahmaputra Board was informed that his engaged advocate is also trying to find out the status of the case from the Additional Sessions Judge No.2, Kamrup(M). Brahmaputra Board pursued for finding out the status of the case but could not find out any status. Thus, due to some communication gap, Brahmaputra Board was unaware about the judgment of the case up to 26.04.2019.

5. On 26.04.2019, Brahmaputra Board received a letter from the M/s C.C. Construction along with a Xerox copy of the judgment dated 26.11.2018 of Misc.(Arb.) Petition No. 11/2015. From the letter of M/s C.C. Construction only Brahmaputra Board came to know about disposal of the case and immediately requested vide letter dated 07.05.2019 to the Asstt. S.G. Gauhati High Court to furnish a certified copy of the judgment and order dated 26.11.2018. Brahmaputra Board received a certified copy of the judgment dated 26.11.2018 along with an opinion on the judgment from Sri S.C. Keyal, Asstt. S.G., Gauhati High Court vide his letter dated 20.05.2019. It is also stated that by that time there was delay of 96(ninety six) days as on 30.05.2019 which is usually permissible period of 90(ninety) days from the date of the judgment is not due to negligence and unavoidable delay on the part of Brahmaputra Board. It is also stated in the petition that the applicants would suffer an irreparable loss and injury if the delay is not condoned and the appeal is not considered on merit.

6. Against the present petition, the respondent side has filed an objection wherein it is stated that the applicants have filed the instant application with memorandum of appeal on 01.06.2019. This Court was pleased to pass an order dated 16.08.2019 in the I.A.(Civil) No.2548/2019 by issuing notice to the respondents by registered post with AD with a direction to take steps within 3(three) days. However, the applicants after 3 years 7 months only on 04.04.2023 served the notice upon the respondent No.1 by Dasti service and as such, on this ground alone the application of the applicants is liable to be dismissed.

7. It is further stated that the impugned judgment and order was passed by the learned Additional Sessions Judge No.2, Kamrup on 26.11.2018 but the applicants applied for certified copy only on 30.04.2019. In other words, there was a delay of 154 days in applying for certified copy and said period cannot be excluded and the applicants have also not stated anything as to under which provision of law delay of 154 days in applying for certified copy will be excluded. Accordingly, there is no ground made out by the applicants in condoning the delay.

8. In the objection, it is also mentioned that the applicants failed to explain as to how and when the earlier counsel Ms. Anupama Dass, informed the applicants about returning of the file of the case to Asstt. S.G., Gauhati High Court, after completion of the argument. According to the opposite party/respondent, the statements of the applicants are nothing but a concocted story made by the applicants.

9. The respondent also stated in the objection that the applicants have made contradictory statement in the condonation application in view of the fact that in the instant case, the applicants stated that they came to know about the disposal of the Misc. Arbitration Case No.11/2015 only on 26.04.2019 and requested the Asstt. S.G., Gauhati High Court for certified copy of the said judgment and order by letter dated 07.05.2019 but the record shows that vide Annexure-1 filed by the applicants along with their application that in fact they applied for certified copy of the said judgment and order dated 26.11.2018 on 30.04.2019. Therefore, their contention that they requested the Asstt. S.G., Gauhati High

Court for certified copy only on 07.05.2019 is not true.

10. Regarding the delay, it is denied by the respondent that there was delay only of 96 days in preferring the appeal rather, there was a delay of 110 days in preferring the connected arbitration appeal by the applicants. That apart, the applicants failed to explain the sufficient cause for delay in preferring the appeal, rather, it is clear that the manner in which the applicants made delay in filing the appeal and thereafter, delay in taking steps clearly established the lapses on the part of the applicants and as such, if the delay is condoned in such case, it would not only prejudice rights of the respondent but also defeat the purpose of Arbitration Act, 1996.

11. The learned counsel for the petitioner has submitted that the delay in filing the present appeal is not intentional but the same is procedural as the department has to take various sanctions at different levels for filing the present appeal. Apart from that, due to change of concerned lawyer of the department which is also caused delay in filing the arbitration appeal. It is also submitted that the non filing of the present appeal with a statutory time period is neither intentional nor deliberate but due to administrative reasons as well as frequent change of concerned lawyer of the department. It is also submitted that the delay in filing the present appeal may kindly be condoned.

12. On the other hand, the learned counsel for the respondent has denied the permissible period of preferring an appeal under Section 37 of Arbitration Act is 90 days. The learned counsel has submitted that the permissible period for preferring an appeal under Section 37 of Arbitration Act is 60 days and not 90 days as provided under Section 13 of the Commercial Courts Act, 2015. According to the learned counsel for the respondent, the applicants in fact did not know about the days of delay when the application was filed before this Court in preferring the connected appeal which is intentional and deliberate and prays for dismissal of the petition.

13. In support of his submission, the learned counsel for the respondent has relied on the

following case laws-

(i) 2022 vol.4 R.A.J. 281(Gau) [Union of India vs M/s Tenzing Construction]

(ii) 2022 vol.5 R.A.J. 122(SC) [State of Uttar Pradesh & Ors. vs Satish Chand Shivhare & Brothers]

14. I have considered the submissions made by the learned counsel for the parties.

15. The Arbitration and Conciliation Act, 1996 does not prescribe the period of limitation for filing of an appeal under Section 37 of the Arbitration Act 1996. The period of limitation is 60 days as prescribed uniformly for all the appeals including those that are preferred under Section 37 of the Arbitration Act, 1996 by virtue of Section 13(1-A) of the Commercial Courts Act, 2015 as explained in the case of Government of Maharashtra(Water Resources Department) through Executive Engineer vs Borse Brothers Engineers and Contractor Private Ltd. reported in (2021) vol. 6 SCC 460.

16. Hon'ble Supreme Court further referred to the judgement in ***Ajmer Kaur Vs. State of Punjab*** reported in **2004 vol. 4 SCC 325** and ***Brahampal Vs. National Insurance Company*** reported in **2021 vol. 6 SCC 512** and observed as follows:

"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 reported in (2013) vol. 14 SCC 81, has held "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 applicants 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 Corporation v. Bhutnath Banerjee*, AIR 1964 SC 1336, *Mata Din v. A. Narayanan*, (1969) 2 SCC 770] , *Parimal v. Veena v. Veena*, (2011) 3 SCC 545 and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157.*

*In the case of **Arjun Singh v. Mohindra Kumar** reported in **AIR 1964 SC 993**, Hon'ble Supreme Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".*

*The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* reported in (2002) 1 SCC 535 and *Ram Nath Sao v. Gobardhan Sao* reported in 2002 3 SCC 195].*

*It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

*In case of **P. Ramachandra Rao v. State of Karnataka** reported in (2002) vol. 4 SCC 578, Hon'ble Supreme Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* reported in 1992 vol. 1 SCC 225.*

The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicants has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

17. In the said judgment, the Hon'ble Supreme Court also considered the submission that in cases involving Government and its instrumentalities, a liberal approach should be adopted. The delay in filing the appeal was of 131 days beyond the prescribed period of 60 days. The contention was repelled, holding that the explanation furnished is nothing but the usual "file-pushing and administrative exigencies". It is held that having regard to the object of the Commercial Courts Act, any delay beyond the prescribed period can only be condoned "by way of exception and not by way of rule".

18. 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. (2012) vol. 3 SCC 563***, as follows :

"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.

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.

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."

19. Thereafter, the Hon'ble Supreme Court also referred to various other judgements where the Supreme Court deprecated inordinate delay in filing appeals. The Supreme Court further held as follows:

“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.* reported in AIR 1962 SC 361 as follows :

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 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."

20. Reverting to the case in hand, I have already pointed out the explanation given by the applicants regarding delay of filing the connected arbitration appeal. The aforesaid explanation preferred by the applicants to demonstrate sufficient cause for delayed filing of the appeal is no explanation in the eyes of law. The averments are vague and do not reflect any specific dates in support of the averments. The delay seemingly occurred because frequent change of concerned lawyer of the department as well as the applicants could not decide whether it had to challenge the impugned order or not, despite being aware of the limitation prescribed. The applicants have miserably failed to demonstrate diligence and bonafide to make out 'sufficient cause' for condoning the delay. Therefore, it is held that delay in filing this appeal has not been sufficiently explained and there exists no sufficient cause for condoning the delay in filing the arbitration appeal.

21. What is seen from the above is that the departmental approval and opinion to file an appeal took over more than 100 days. The case was assigned to an advocate for drafting of an appeal only after the expiry of 60 days. The reason for this delay is not explained. It also appears that the applicants had applied for certified copy of the judgment of Misc. Arbitration Case No. 11/2015 also after the prescribed period of 60 days and no explanation was given by the applicants regarding such delay. Thereafter, the applicants filed the petition for condoning the delay before this Court showing 96 days of delay in the year 2019 and the order was passed to issue notice to the respondent with a direction to take step within

3(three) days. But the applicants had taken steps after three years i.e. in the year 2023 against the respondent by Dasti mode of service which shows that the applicants are not at all serious in pursuing the matter in a diligent manner. Surely, the grounds shown by the applicants are not 'sufficient cause' for condonation of 96 or 154 days delay in filing the connected appeal.

22. In the result, delay condonation petition is rejected. Since the delay condonation application is rejected, the connected appeal also stands dismissed.

23. The I/A stands disposed of.

JUDGE

Comparing Assistant