

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

MFA NO. 4254 of 2023(AA)

BETWEEN:

LATE SRI.M.M. BHATIA,
SINCE DEAD,
REPRESENTED BY HIS LRS,
(ALREADY ON RECORD AS
(APPELLANTS NO.1 AND 2).

1. SRI. SURESH BHATIA,
S/O LATE M M BHATIA,
AGED ABOUT 62 YEARS.

2. SMT. AARTI BHATIA,
W/O SURESH BHATIA,
AGED ABOUT 55 YEARS.

BOTH RESIDING AT NO.4406/7/8,
HIGH POINT IV,
45/1, PALACE ROAD,
BANGALORE- 560 001.

...APPELLANTS

(BY SRI. C.K. NANDAKUMAR, SENIOR ADVOCATE
FOR SRI. ANIL RAMACHANDRA ADVOCATE)

AND:

1. NATIONAL HIGHWAYS AUTHORITY OF INDIA,
NHAI, PIU BENGALURU,
SY.NO.13, NAGASANDRA VILLAGE,
14TH KM FROM
BENGALURU-TUMKUR ROAD,
BENGALURU-560 073.
REPRESENTED BY,
ITS PROJECT DIRECTOR.

2. THE ARBITRATOR &
DEPUTY COMMISSIONER,
BENGALURU RURAL DISTRICT,
(HYDERABAD-BENGALURU SECTION NH-7),
DISTRICT ADMINISTRATION BUILDING,
1ST FLOOR, BEERASANDRA VILLAGE,
KUNDANA HOBLI (PO),
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT-562 110.
3. THE SPEICAL LAND ACQUISITION OFFICER
& COMPETENT AUTHORITY,
NATIONAL HIGHWAYS AUTHORITY OF INDIA,
HYDERABAD-BENGALURU SECTION OF NH-7,
NO.678/3, NEERUBHAVI KEMPANNA LAYOUT,
HEBBAL, BENGALURU-560 024.
REPRESENTED BY
THE SPEICAL LAND ACQUISITION OFFICER.

...RESPONDENTS

(BY SMT. SHILPA GHANASHYAMBHAI SHAH,
ADVOCATE FOR R1 AND R3,
SRI. ADITYA VIKRAM BHAT, AGA FOR R2)

THIS MFA IS FILED UNDER SECTION 37(1)(C) OF THE ARBITRATION AND CONCILIATION ACT, 1996 AGAINST THE ORDER DATED 14.11.2022 PASSED IN A.P.NO.115/2020 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, ALLOWING THE PETITION FILED UNDER SECTION 34 (2) OF THE ARBITRATION AND CONCILIATION ACT, 1996.

IA NO.1/2023 IS FILED UNDER SECTION 5 OF THE LIMITATION ACT READ WITH SECTION 151 OF CIVIL PROCEDURE CODE, PRAYING TO CONDONE THE DELAY OF 129 DAYS IN FILING THIS APPEAL AGAINST THE IMPUGNED ORDER IN A.P.115/2020 ON THE FILE OF THE HON'BLE PRINCIPAL AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT DATED 14.11.2022.

THIS APPEAL ALONG WITH IA NO.1/2023 FOR CONDONATION OF DELAY, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.12.2024, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **V KAMESWAR RAO J.**, DELIVERED THE FOLLOWING:

**CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
THE HON'BLE MR JUSTICE S RACHAIAH**

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

Vide the present order, this Court shall decide the application being IA No.1/2023, which has been filed under Section 5 of the Limitation Act read with Section 151 of CPC by the appellants, seeking condonation of delay of delay of 129 days in filing the appeal. The relevant paragraphs of the application seeking condonation are the following:-

xxx xxx xxx xxx xxx xxx xxx xxx

"3. I further submit that Government had issued notification for acquisition of the portion of the above said land under the Land Acquisition Act for acquiring the land measuring an extent of 24 ½ guntas which is equal to 2475 Sq.mts. and equal to 26,640 Sq.feet for formation of the national highway (NH-7). The authority initiated the proceedings in No. LAQ/NH-7/Hy-R/CA/CR/14(5)/2011-12 to pass the award. Accordingly, the authority vide order dated 31.1.2017 passed the award to the tune of Rs.7,07,19,219/- (after deducting TDS an Rs.6,36,47,298/-)

xxx xxx xxx xxx xxx xxx

7. I further submit that during the months of December 2022 onwards, I wasn't stationed at one place and was travelling for business purposes to various cities of the country. I further submit that in the month of January 2023, I travelled abroad to Davos, Switzerland for business purposes. Hence, I was unable to meet my counsels and seek advice on my the recourse available to me with respect to the impugned order passed by the Hon'ble Prl. District and Sessions Judge, Bengaluru Rural. It is not in dispute that there has been a delay of 129 days in filing this appeal and I was unaware of the legal necessity to file within a stipulated period. I further submit that the reason accorded by me is bonafide and not intentional. If this application is not allowed I will be put to irreparable loss, whereas the respondent will not be prejudiced in any way if this application is allowed."

2. Since this appeal filed Under Section 37 of Arbitration and Conciliation Act, 1996 ('Act of 1996') arises from the impugned order passed by the Principal District and Sessions Judge, Bengaluru Rural District ('Sessions Judge' in short) and not relatable to a commercial dispute, the period of limitation in filing the appeal, shall be as

prescribed in Article 116 of the Limitation Act, 1963 ('Limitation Act' in short).

3. Mr. Nandakumar has placed reliance on the judgment of the Supreme Court in the case of ***Government of Maharashtra (Water Resources Department) represented by the Executive Engineer Vs. Borse Brothers Engineers and Construction [(2021) 6 SCC 460***, to say, the limitation beyond 90 days can be condoned.

4. In support of his submission, Mr. Nandakumar has relied on Article 116 of the Limitation Act to contend, the limitation for filing an appeal in a non-commercial suit shall be 90 days in view of Article 116. This according to Mr. Nandakumar is because, the Section 37 of the *Arbitration and Conciliation Act, 1996* ('Act of 1996' in short) which provides for a remedy of appeal against the order passed under Section 34 of the Act of 1996 does not stipulate any limitation and as such one has to resort to Article 116 of the Limitation Act and file the appeal within 90 days as the order challenged is of the Sessions Judge.

Apart from relying upon the judgment of the Hon'ble Supreme Court in **Government of Maharashtra** (supra), he has relied upon the judgment of the Bombay High Court in **Goa Shipyard Limited Vs M/s. Shoft Shpyard Pvt.Ltd (Arbitration Appeal No.38/2024 Dated: 26 April, 2024) through its authorized Officer and Additional General Manager (Legal), Mr.Kishore Manohar Samanth Vs. Shoft Shipyard Private Limited [2024 SCC OnLine Bombay 1168]**. He has also relied upon the judgment of the Division Bench of the Delhi High Court in **Continental Construction Vs. NHPC and another [2023 SCC OnLine Delhi]**. He has also relied upon the judgment of the High Court of Himachal Pradesh at Shimla in the case of **Balakram and others Vs.NHAI (Arbitration Petition No.17/2023 Dated 31.07.2023) and Connected Arbitration Appeals**, in support of his submissions.

5. On facts, he has drawn our attention to Paragraph-7 of the application seeking condonation of delay of 129 days. He states that the averments made in

Paragraph-7 clearly demonstrate the bonafide conduct of the appellants and also the fact there is no negligence on the part of the appellants in filing the appeal with delay of 129 days. That apart, it is his submission that, the delay is not large enough to be fatal. He also stated that, no prejudice shall be caused to the opposite party, if the application is allowed and the appeal is heard on merits for the reason, in view of the position of law as laid down by the Hon'ble Supreme Court, in as much as even if the learned Principal Sessions Judge had set aside the award, the appellants herein are within their right to seek a fresh reference in accordance with agreement/National Highways Act, for adjudication of the dispute existing between the appellants and the respondents / NHAI. So, he states the application be allowed by condoning the delay of 129 days.

6. On the other hand, Smt. Shilpa Ghanshambhai Shah appearing for the Respondent-NHAI would contest the submissions made by Mr. Nandakumar by drawing our attention to the very paragraph-7 of the application

seeking condonation of delay to contend that, Paragraph-7 only explains the non-filing of the appeal in the months of December 2022 and January 2023 and not thereafter. She stated that the impugned order was passed on 14.11.2022 and 90 days had expired in February 2023, whereas the appeal was filed on 21.06.2023. Hence, (i) it is not a bonafide application; (ii) The appellants were negligent and it is not a short delay, which can be condoned in view of the law.

7. Smt. Shah has also drawn our attention to the objections filed by Respondent No.1 wherein Respondent No.1 has taken the following stand:-

*"3. It is submitted that AP No. 115/2020 had been filed by this Respondent under Section 34 (2) of the A & C Act, seeking to set- aside the Arbitral Award dated 20th August 2020 passed in LAQ/ARB/NH-7(D)/CR/02/2019-20, wherein the 3rd Respondent herein ("**Arbitrator**") has enhanced compensation for non- agricultural lands acquired in Sy. No. 65 to an extent of 2475 Sq. Mtrs. situated at Chikkasanne Village, Devanahalli Taluk, Bengaluru Rural District (hereinafter referred to as "**Acquired***

Land") from Rs. 8,611/- per sq. mtr. to Rs. 12,917/- per Sq. Mtr.

4. *It is submitted that the instant appeal has been filed with a delay of 129 days. The application seeking for condonation has been accompanied with an affidavit, wherein the Appellant has stated that during the months of December 2022 onwards, the Appellant was travelling for business purposes and hence he was unable to meet his counsels and seek advice on the recourse available. It is most humbly submitted by this Respondent that such explanations cannot be accepted.*

5. *The instant appeal is filed under Section 37 of the A & C Act. The Hon'ble Supreme Court, has, held, time and time again that the object and purpose of the A & C act is a speedy and effective dispute resolution process and that the same must be upheld.*

6. *In this regard, the Hon'ble Supreme Court has clarified that in respect of appeals filed under Section 37 of the A & C Act, 1996, the provisions of Article 116 and 117 of the Limitation Act, 1963 ("**Limitation Act**") would apply. The Supreme Court has held that in view of the object of the A & C Act, being speedy disposals, delay is to be condoned by way of exception and not a rule. It is clear that in the instant case, the Appellants have been negligent and have not acted in a Bonafide*

manner, therefore, they are not entitled to relief of condonation of delay.

7. *However, it is pertinent to mention that keeping in view the object of the Arbitration and Conciliation Act, it is necessary to ensure that speedy resolution of disputes is not hampered, it is submitted that Courts have time and time again ensured that inordinate delays are not condoned.*

8. *It is further submitted that it is a well settled principle of law that a party seeking condonation of delay has to show sufficient cause for not presenting the instant appeal within time. In the instant case, the 1st Appellant has stated in his affidavit that he was out of the country from December 2022 and hence could not meet his counsels. It is submitted that in so far as the instant case, the Appellant was not the only party to the case in AP 115/2020. The Appellant held ownership of the land along with the Appellant No. 2, who is also a party to the Arbitral Proceedings, as well as AP No. 115/2020. Therefore, it is not a case where no action can be taken in his absence.*

9. *Even assuming that such reason of one party to the suit is outside the country could constitute "sufficient cause" within the meaning of Section 5 of the Limitation act, the same must be accepted only in the event that the delay is minimal. In the instant case, the delay is 129 days.*

10. Further, it is submitted that Courts have held time and again, that condonation is an exception and not a rule. This, coupled with the principle that sufficient cause cannot be construed so liberally that inordinate delays are condoned, and coupled with the object and purpose of the Arbitration Act clearly shows that a delay of 129 days cannot be condoned, without causing prejudice to the Respondents herein.

11. The position taken by Courts is clear in this regard. Inordinate delays such as in the instant case, should not be condoned, especially when no sufficient cause has been established."

She seeks the rejection of the application.

8. Mr. Aditya Vikram Bhat, the learned AGA appearing for Respondent No.2 would state that, though the appeal is not directed against the said respondent, but as a counsel assisting the Court, he intends to rely on the latest opinion of the Hon'ble Supreme Court in the case of **State of M.P. Vs. Ramkumar Choudhary [SLP (Civil Appeal No.48636/2024)]**, wherein the Hon'ble Supreme Court has laid down the principles, which shall govern the limitation.

9. Having heard the learned counsel for the parties, and perused the record there is no dispute on the provision of

law, which shall govern the application under consideration by this Court. The order appealed being in a non-commercial suit passed by Sessions Judge, the limitation to file appeal shall be governed by Article 116 of the Limitation Act, as Section 37 of the Act of 1996 does not prescribe limitation. The Supreme Court has settled the law in the case of **Government of Maharashtra** (supra), wherein the Hon'ble Supreme Court in Paragraph-63 has stated the following:-

"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."

10. Having noted the position of law, it is clear that the delay in filing the appeal Under Section 37 of the Act, of 1996 over and above 90 days, can be condoned by way of exception and not by way of a rule. In a fit case, in which a party has otherwise acted bonafide and not in a negligent manner, a short delay beyond such period can, in the discretion of the Court, be condoned.

11. Having noted the position of law and also the averments in paragraph-7 of the application giving reasons seeking condonation of delay, the same is filed by Mr. Suresh Bhatia, the first legal representative of late M.M.Bhatia. He has stated, during the month of December 2022, he was not stationed at one place and was traveling for business purposes to various cities of the country. He has also stated in the month of January 2023, he travelled to Switzerland for business purposes and because of which he could not able to meet his counsel and seek advice on the recourse available to him in respect to the impugned order passed by the Sessions Judge.

12. Suffice to state the application do not explain why he could not file appeal in the month of November 2022 and also in the moth of February 2023, when the limitation expired as the reasons given only explains of his traveling during the months of December 2022 and January 2023, but not in the month of November 2022, or for that matter in the month of February 2023. The appeal was filed on 21.06.2023, that it is after almost 04 months after the expiry of the limitation. In any case, it is the case of the appellants that, there is a delay of 129 days. The grounds on which condonation is sought that the appellant No.1 was travelling, is not appealing as the Appellant No.2- Smt.Aarti Bhatia (another LR) could have filed an appeal within the limitation period, as it is not the case of the appellants that she was also traveling with Mr. Suresh Bhatia. The traveling of appellant no.1 for business purposes and not caring to file appeal within the limitation period of 90 days, do not show bonafide, rather it show, lack of bonafide, which is negligence. That apart, the delay is not a small one, but of 129 days, beyond 90 days. If the delay is translated in months, surely it would be

more than 04 months beyond 90 days. Further, there is no explanation for not filing the appeal in the month of November 2022, immediately on the passing of the impugned order on 14.11.2022 before travelling for business purposes or for that matter after coming back from Switzerland in January 2023. There is also no explanation why appellant No.2, who remained in India could not file the appeal.

13. The Hon'ble Supreme Court has said that, the condonation of the delay should be as an exception, not as a rule. In view of the above, we are of the view that the case of the appellant does not fall within the parameters of law laid down by the Hon'ble Supreme Court in the case of ***Government of Maharashtra (supra)***.

14. In so far as the reliance placed by Mr. Nandakumar on the judgment of the Hon'ble Supreme Court in the case of ***Goa Shipyard Limited (supra)***, more specifically Paragraphs-36 to 39, which we reproduce is concerned (AGA), the Bombay High Court was dealing with an application filed by the appellant therein seeking

condonation of delay on the ground that, due to an inadvertent error, the Advocate for the appellant has failed to file two appeals at the time when the remaining appeals were filed on behalf of the appellant. There is a finding of fact that, eight appeals were filed within the period of limitation and the pleadings therein were completed and the appeals were taken up for hearing. It is at that stage, when convenience compilations were being prepared to assist the Court, that the Advocates realized that, the aforesaid two appeals have not been filed. In that context, the explanation pertaining to over sight and inadvertent error was appreciated and accordingly, the Court had condoned the delay. On facts, the judgment is clearly distinguishable.

36. The applicant / appellant GSL has relied upon a series of judgments noted hereinabove, in support of its contention that the length of delay is immaterial, so long as the explanation is found to be reasonable and acceptable. Emphasis is placed on the said judgments in the cases of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others (supra), N. Balakrishnan Vs. M. Krishnamurthy (supra), Bhivchandra Shankar More

Vs. Balu Gangaram More and others (supra) and Sheo Raj Singh through LRs and others Vs. Union of India and another (supra).

37. This Court finds that the Supreme Court has indeed indicated that length of delay in itself cannot be a relevant consideration while considering a prayer for condonation of delay and that the emphasis has to be on sufficiency of cause for condoning delay. A liberal approach has been recommended when the Court does find that genuine reasons have been put forth while seeking condonation of delay. It is also laid down that State authorities cannot claim any special consideration as compared to a private litigant when a prayer for condonation of delay is to be considered. Yet, this Court does find substance in the contention raised on behalf of GSL that merely because it is a State entity, it may not be meted out step-motherly treatment. The Supreme Court has also distinguished between what can be said to be an explanation as opposed to an excuse while seeking condonation of delay. In other words, if the reasons put forth are found to be bona fide, the Court would be inclined to condone delay.

38. On the other hand, the learned counsel appearing for SHOFT has specifically relied on the judgement of the Supreme Court in the case of *Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited (supra)*. It

is laid down therein that delay of each day has to be explained and that if the explanation is found to be without any justification or mala fide, there can be no question of condonation of delay. It is emphasized on behalf of SHOFT that the applications for condonation of delay are brief and without any cogent explanation.

39. The delay in the present case is of 1040 days. It is not as if minor delay is sought to be condoned, and therefore, this Court is required to consider the explanation given in the applications for condonation of delay. As noted hereinabove, the main ground while seeking condonation of delay is that the advocates for the applicant / appellant GSL, due to an inadvertent error, failed to file the said two appeals at the time when the remaining eight appeals were filed on behalf of GSL. The record does show that the aforesaid eight appeals were indeed filed within the period of limitation. The pleadings were completed and the appeals were to be taken up for final hearing. It is at this stage that when convenience compilations were being prepared to assist this Court that the advocates for GSL realized that the aforementioned two appeals had not been actually filed. It is in this context that the explanation pertaining to 'oversight' and 'inadvertent error' has to be appreciated. It is specifically stated that the advocates did not intentionally or deliberately hold back filing of the said appeals. This Court is of the

ARA38_24.doc opinion that when a group of appeals is to be filed, there can be a human error in failing to file all the appeals at one go. It cannot be said in the present case that GSL held back filing of the two appeals in order to gain something in the process. It is not as if some amounts were due and payable to GSL with interest and longer pendency of the appeals would eventually inure to the benefit of GSL in the context of the interest component. On the contrary, GSL is obliged to make payments and the subject appeals that were filed along with applications for condonation of delay pertained to the very question of interest sought to be raised against SHOFT. In these circumstances, it cannot be said that the explanation tendered on behalf of GSL smacks of mala fide or that, such applications can be rejected as being without any justification. The Supreme Court, in its judgement in the case of Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited (supra), has emphasized upon the requirement of speedy resolution of commercial disputes in the context of the Arbitration Act. In the said case, although the delay was only 131 days beyond the 60- day period provided for filing an appeal in the context of the Commercial Courts Act, 2015, as a matter of fact, the Supreme Court found that there was no explanation worth the name contained in the application for condonation of delay, beyond the usual statements regarding file- pushing and administrative exigencies. It is

significant that in the present case, GSL being a State Authority, has not given the usual 'excuse' of file-pushing in the departments for explaining the delay, but a straight-forward, honest and clear explanation is given as to why only the said two appeals could not be filed within the period of limitation, while all the other eight appeals were admittedly filed within the period of limitation.

15. In so far as the judgment of the Delhi High Court in the case of **Continental Constructions** (supra) is concerned, the Division Bench of the Delhi High Court has held that the sufficient cause must be liberally interpreted to ensure that the substantial justice is done, if negligence, inaction or lack of bonafides are not imputed to the party concerned.

16. In the case in hand as stated above, the facts as pleaded by the appellants themselves show lack of bonafides. Rather it is a case of negligence, where a litigant, knowing well that the filing of appeal has to be within the prescribed time, went on business trips. Further, there is also no explanation why the appeal could not be filed in months of November 2022 and February

2023 that too till June, 2023. It follows, there are no exceptional circumstances which shall make this court condone the delay.

17. In so far as the judgment in the case of **Balakram** (supra) of the High Court of Himachal Pradesh is concerned, the facts were, there was a delay of 02 months in preferring the appeals. The averments made in the application show that the appellants were not informed by their counsel about the passing of the judgment at the relevant time. They were under the bonafide belief that, as and when the judgment would be passed, their counsel would intimate them. It was only when they enquired about the case from their counsel on 27.04.2022, they came to know about the judgment has already been passed on 07.01.2022. It is thereafter, the steps were taken to file the appeal. Suffice to state, on facts the judgment is clearly distinguished.

18. We may at this stage re-produce the Paragraph-7 of the judgment in the case of **State of M.P. Vs. Ram Kumar Choudhary** (supra) relied upon by Mr.

Bhat, AGA wherein the Hon'ble Supreme Court in paragraph 7 has held as under:-

7. *There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation*

which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: **Ajit Singh Thakur Singh and Another v. State of Gujarat, AIR 1981 SC 733**)."

(emphasis supplied)

19. The Hon'ble Supreme Court has clearly held that, when the party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that, because of some event or circumstance arising before the limitation expired, it was not possible for it to file appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause. There may be event and circumstance subsequent to the expiry of period, which may further delay the filing of the appeal, that too when the limitation has expired, the appeal being filed must be traced to the cause arisen within the period of limitation.

20. In the present case, there is no explanation given by the appellants for the period between November

2022 to December 2022 and January 2023 and February 2023 and also for the delay that has taken place between February 2023 and June 2023, when they had actually filed the appeal. Hence, the ratio laid down by the Hon'ble Supreme Court is applicable to the facts of this case.

21. In view of our above discussion, it must be held the application filed by the appellants seeking condonation of delay of 129 days in filing the appeal is not bonafide and shows negligence and also period of 129 days over and above 90 days is not a small period, which can be condoned in the facts..

22. The application-IA No.1/2023 is **dismissed**. Consequently, the appeal filed under Section 37 of the Act of 1996 is also **dismissed**. No costs.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

KGR*