

Neutral Citation No. - 2024:AHC-LKO:39602

RESERVED

Court No. - 30

- (1) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 145 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Mishri Lal And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari
Connected with
- (2) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 146 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Shashi Kumar And Ors.
Counsel for Applicant :- Madhukar Ojha, Vijay Kumar Tewari
Counsel for Opposite Party :- Vijay Kumar Tewari
with
- (3) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 147 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Nattha Ram And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari
with
- (4) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 148 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Pramod Kumar And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari
with
- (5) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 149 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Ram Tirath And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari
with
- (6) **Case :-** CIVIL MISC REVIEW APPLICATION No. - 150 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Smt. Brahma Devi And Ors.

Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

With

- (7)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 151 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Jagdish Prasad And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

with

- (8)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 152 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Upendra Kumar And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

with

- (9)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 153 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Uma Shanker Verma And Ors.
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

with

- (10)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 154 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Mohammad Naim And Others
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

with

- (11)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 155 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Ram Chander And Others
Counsel for Applicant :- Madhukar Ojha
Counsel for Opposite Party :- Vijay Kumar Tewari

with

- (12)** **Case :-** CIVIL MISC REVIEW APPLICATION No. - 156 of 2023
Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director
Opposite Party :- Mahesh Prasad And Ors.

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(13) Case :- CIVIL MISC REVIEW APPLICATION No. - 157 of 2023

Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director

Opposite Party :- Guru Saran And Ors.

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

With

(14) Case :- CIVIL MISC REVIEW APPLICATION No. - 158 of 2023

Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director

Opposite Party :- Devtadeen Verma And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(15) Case :- CIVIL MISC REVIEW APPLICATION No. - 159 of 2023

Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director

Opposite Party :- Akhilesh Kumar And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(16) Case :- CIVIL MISC REVIEW APPLICATION No. - 160 of 2023

Applicant :- National Highways Authority Of India Piu Lucknow Thru Its Project Director

Opposite Party :- Smt Sampata Devi And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(17) Case :- CIVIL MISC REVIEW APPLICATION No. - 161 of 2023

Applicant :- National Highways Authority Of India Thru Its Project Director

Opposite Party :- Vijay Pal And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(18) Case :- CIVIL MISC REVIEW APPLICATION No. - 162 of 2023

Applicant :- National Highways Authority Of India Thru Its Project Director

Opposite Party :- Satyanam And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(19) Case :- CIVIL MISC REVIEW APPLICATION No. - 163 of 2023

Applicant :- National Highways Authority Of India Thru. Project Director

Opposite Party :- Amar Singh And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(20) Case :- CIVIL MISC REVIEW APPLICATION No. - 164 of 2023

Applicant :- National Highways Authority Of India Thru Its Project Director

Opposite Party :- Ram Kumar And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

with

(21) Case :- CIVIL MISC REVIEW APPLICATION No. - 165 of 2023

Applicant :- National Highways Authority Of India Thru Its Project Director

Opposite Party :- Anup Kumar And Others

Counsel for Applicant :- Madhukar Ojha

Counsel for Opposite Party :- Vijay Kumar Tewari

Hon'ble Om Prakash Shukla,J.

(1) Heard Shri Ashok Pandey and Shri Madhukar Ojha, learned Counsel representing the review applicant/NHAI and Shri Vijay Kumar Tewari, learned Counsel representing the respondent.

(2) National Highways Authority of India (hereinafter referred to as 'NHAI')/review applicant has preferred the above-captioned review applications under Chapter IX Rule 14 of the High Court Rules read with Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908, seeking review of the judgment/order dated 31.10.2023 passed by this Court, whereby bunch of appeals filed by NHAI under Section 37 of the Arbitration & Conciliation Act, 1996, leading Arbitration

Appeal Defective No. 53 of 2023 (National Highway Authority of India Vs. Smt. Sampata Devi and 2 Others) have been dismissed on the ground of limitation. Operative portion of the judgment under review dated 31.10.2023 reads as under :-

“(44) In view of the authoritative Judgments of the Apex Court in M/s Borse Brothers Engineers & Contractors (supra), it must be held that an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 should be filed within 60 days from the date of the order as per Section 13(1A) of the Commercial Courts Act, 2015. However, in those rare cases where the specified value is for a sum less than INR 3,00,000.00 then the appeal under Section 37 would be governed by Articles 116 and 117 of the Schedule of the Limitation Act, as the case may be.

(45) Further, Section 5 of the Limitation Act will apply to the appeals filed under Section 37 of the Act, 1996 and in holding the said applicability, the Apex Court noted with affirmative that Section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act, 1996 and merely provides for a limitation period of 60 days from the date of the judgment or order appealed against, without going into whether delay beyond this period can or cannot be condoned.

(46) Further, the expression 'sufficient cause' under Section 5 of the Limitation Act is not elastic enough to cover long delays and merely because sufficient cause has been made out, there is no right to have such delay condoned. The Apex Court further held that only short delays, can be condoned only by way of an exception and not by the way of rule, and that too only when the party acted in a bona fide manner and not negligently.

(47) Since, in the present bunch of appeals, the impugned order passed by the Additional District Judge, Barabanki under Section 34 of the Act, 1996 has been sought to be challenged by NHAI by filing a belated appeal

under Section 37 of the Act, 1996 beyond the permissible 60 days without any "sufficient cause", the above-captioned appeals are held to be time barred.

(48) For all the aforesaid reasons, application for condonation of delay in filing the above-captioned appeals are hereby rejected. Consequently, all the appeals are dismissed on the point of limitation."

- (3) At the outset, learned counsel for the review applicant/NHAI drawing attention to the application filed by the review applicant for initiating proceeding against the respondent under Section 340 of the Code of Criminal Procedure would submit that the respondent had misled the Court by filing a document which according to respondent was issued by the Registrar of Road Transport, but no such document in fact was ever issued by the Registrar of Road Transport. According to the learned Counsel, the respondent has not filed any rebuttal to the aforesaid averments made in the application filed by the review application under Section 340 Cr.P.C., hence a proceeding under Section 340 Cr.P.C. may be drawn against the respondent.
- (4) Learned Counsel for the review applicant has made following submissions for seeking review of the judgment/order dated 31.10.2023 and prays to review the judgment/order dated 31.10.2023 :-

“(i) that in matters of land acquisition and National Highway Act, there is no application of the Commercial Court Act, 2015;

(ii) that the award is *nonest* and thus the order under Section 34 of the Arbitration & Conciliation Act, 1996 passed by the learned District Judge is automatically illegal and void;

(iii) that the award passed by the Arbitrator is without any reasoning and is in violation of Section 18 of the Arbitration & Conciliation Act and since it being a void/illegal order, there would be no limitation in challenging the said void order;

(iv) that no reasonable ground has been stated by this Court for not allowing the delay condonation application and the same is based on no fact and records.

(5) On the other hand, learned Counsel representing the respondent, while supporting the judgment under review, has submitted that it is an admitted case of the NHAI/review applicant that although approval for filing of the arbitration appeals under Section 37 of the Arbitration and Conciliation Act was accorded to NHAI on 10.01.2023 by the Project Director, however, these appeals came to filed only in July, 2023 and there had been no valid/satisfactory explanation on behalf of the review applicant/appellant in the affidavit filed in support of application for condonation of delay in filing those appeals, which are more than six months. According to the learned Counsel, by filing these review applications, the review applicant has in fact tried to divert the issue involved in the appeal and has raised the baseless plea in the review application that delay was caused due to constituting and/or appointing the Arbitrator. It has been submitted that the plea that delay was caused due to constituting and/order appointing the Arbitrator,

was never raised before any Court earlier by the review applicant. According to the learned Counsel, the respondent is a poor, landless farmer and the land acquired by NHAI had been the only source of livelihood. Thus, it has been prayed for dismissal of the review application.

(6) Having heard learned Counsel for the parties and gone through the record available before this Court, it is required to be noted that law is well settled that Courts have a very limited power of review and generally speaking the Court has to see the following points, while entertaining any review application :-

- I. As to whether the review application is based on any discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made;
- II. As to whether the review application is on account of some mistake or error apparent on the face of the record; or
- III. As to whether the review application has been preferred for any other sufficient reason.”

(7) In **Sow Chandra Kante and Another Versus Sheikh Habib :** (1975) 1 SCC 674, the Apex Court held that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. As to the process and the conditions precedent for entertaining a review

application, the Apex Court in **Parsion Devi and Others v. Sumitri Devi and Others** : (1997) 8 SCC 715 clarified that an error that is not self-evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

- (8) In the above-captioned review application, the hinge of the argument of the learned counsel representing the review applicant is that the alleged illegality of the award has not been considered by this Court while dismissing the appeals filed by him under Section 37 of the Arbitration and Conciliation Act, however, from perusal of the judgment under review, what this Court find is that the said contention is an argument on merits, which had not yet arrived in the appeals filed by the review applicant/appellant as all the appeals of the review applicant was dismissed on the ground of limitation. Moreso, although, the appellant has sought to argue and re-argue on merits of the award including the cause for initiating an action under Section

340 of Cr.P.C against the respondent on the ground that no reply in rebuttal has been filed by them, however, this Court finds that the review applicant/appellant has failed to address the considerable delay in filing those appeals. The rhetoric submission of the learned counsel is based on merits, which is a stage subsequent to the condition precedent of limitation and cannot be a ground for review.

- (9) This Court on the basis of records and submission of the parties has already dismissed the appeals on the ground of limitation as this court was of the view that no 'sufficient cause' was made out by the appellant seeking condonation of inordinate delay in filing those appeals.
- (10) It is true that condonation of delay has to be within the four corners of law and that too only when the party acts in a *bona fide* manner and not negligently. Recently, the Apex Court in the case of **S. Murali Sundaram Vs Jothibai Kannan & Ors.** : 2023 SCC Online SC 185 has held that exercise of power of review under Order XLVII Rule 1 C.P.C. is limited and under the guise of review, the review applicant could not be permitted to re-agitate and re-argue the question which had already been addressed and decided by the Court earlier. The Apex Court has also observed that even if the judgment sought to be reviewed is erroneous, the same cannot be a ground to review the same in exercise of powers under Order XLVII Rule 1 C.P.C. An

erroneous order may be subjected to appeal before the higher forum but cannot be a subject matter of review under Order XLVII Rule 1 CPC.

- (11) Keeping in view the aforesaid precedents, when this Court examines the review application, it is found that none of the parameters for grounds for consideration of a review applications have been made out by the applicant/NHAI. Apparently, the fulcrum of the submission of the learned counsel for the applicant is that these appeals have been dismissed by this Court construing the limitation for filing an appeal under section 37 of the Arbitration and Conciliation to be 60 days from the date of the order as per Section 13(1A) of the Commercial Courts Act, 2015 and since the provisions of Commercial Courts Act, 2015 are not applicable to the present arbitration under the National Highway Act in view of the judgment of this Court passed in the case of **Raj Kumar Maurya Vs Union of India & 2 others** (Writ-C No. 24107/2020), an error apparent has crept in the order under review dated 31.10.2023. This Court finds that the said judgment of the Hon'ble Division Bench has been wrongly understood by the applicant, in as much as the said judgment merely holds that a dispute for compensation under the National Highway Act is not a commercial dispute, so as to attract the provisions of Commercial Court Act, 2015.

(12) This Court finds that the appeal of the review applicants/NHAI has been primarily dismissed on the ground of limitation as there had been no sufficient cause explained by the applicant-NHAI in preferring these appeals at such a belated stage. This Court has very exhaustively dealt with the said aspect and arrived at a conclusion that there was no explanation for delay of more than 170 days and even the affidavit filed by NHAI was sketchy and did not correlate to any events to specific dates. This Court has returned a finding that in some appeals the delay had been more than 318 days and it was in this background, this Court observing that 60 days have been prescribed under Section 13(1A) of the Commercial Court Act, 2015, the appeals were dismissed on twin grounds of (a) having been not filed within the said prescribed 60 days; and (b) neither any sufficient cause has been able to be explained by the applicant-NHAI.

(13) No doubt, in view of the judgment of a Division Bench of this Court, a compensation dispute under the National Highway Act may not be a commercial dispute, so as to attract the provisions of Commercial Court Act, however, non-applicability of the Commercial Court Act does not help the applicant-NHAI in any manner as in view of the authoritative judgment of the Apex Court in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers & Contractors Pvt. Ltd. : (2021) 6 SCC**

460, an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 must be filed either within 60 days from the date of the order as per Section 13(1A) of the Commercial Courts Act, 2015 or within 90 days as per Articles 116 of the Schedule of the Limitation Act, as the case may be.

- (14)** Thus, even if the best case of the applicant-NHAI is taken for consideration, this Court is unable to find any explanation or sufficient cause for filing these appeals beyond the prescribed 90 days and still these appeals are miserably time-barred. The applicant- NHAI has neither taken any effort nor shown any endeavour to explain the delay in preferring these appeals beyond the prescribed period of limitation. As a matter of fact, there has been no effort to explain the delay of more than six months in filing these appeals after the approval was given by the competent Authority of the appellants to file these appeals.
- (15)** As to the other grounds urged by the learned counsel for the applicant-NHAI, the same appears to be a re-argument on merits of the present case, on the part of the learned counsel, which is not permissible while entertaining a review petition.
- (16)** This Court need not deal with the other aspect leading to the merits of the case, as the appellant/review applicant has failed to cross the first bridge of limitation. In the absence of any “sufficient reasons” in the applications seeking review of the

order dated 31.10.2023, the above-captioned review applications are **dismissed**.

(17) There shall be no order as to cost.

(Om Prakash Shukla, J.)

Order Date :- 24th May, 2024
Ajit