



2026:AHC:54777-DB

Reserved on : 27.02.2026

Delivered on : 18.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT 1996 DEFECTIVE No. - 664 of 2023

Union of India

.....Appellant(s)

Versus

M/s Atul Construction Company and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: Bal Mukund
Counsel for Respondent(s)	: Abhiuday Mehrotra, Neerja Singh, Sharve Singh

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per: Arun Bhansali, CJ)

1. This appeal is directed against judgment dated 12.10.2022 passed by Commercial Court, Jhansi, whereby the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') against award dated 15.01.2018, passed by the Arbitral Tribunal has been dismissed.
2. Office has reported the appeal as barred by 375 days.
3. An application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal, supported by an affidavit of the Assistant Garrison Engineer, Military Station, Lalitpur, has been filed. In the affidavit, it is claimed that the appellant came to know about the dismissal of the application under Section 34 of the Act by judgment dated 12.10.2022 when it received show cause notice dated 10.08.2023 on 17.08.2023 from the

Court of 18th District Judge, Bhopal to appear on 04.09.2023 in execution application filed by the respondents. It is claimed that immediately after receiving the show cause notice from Bhopal, the appellant requested its counsel at Jhansi by letter dated 31.08.2023 to provide a copy of the judgment dated 12.10.2022. It is alleged that the counsel neither informed the dismissal of the case nor provided any copy of the judgment to the appellant till 31.08.2023. A copy of the judgment and order dated 12.10.2022 along with back dated legal opinion dated 05.11.2022 was handedover to the officer of the appellant on 01.09.2023.

4. On receipt of the opinion, the appellant sought permission from HQ, Jhansi for filing the appeal before the High Court, statement of case along with documents were sent on 22.09.2023, officer was authorized to sign the Vakalatnama on 13.10.2023. Additional Solicitor General of India ('ASGI') was requested to nominate Government Counsel for filing the appeal. The counsel who has filed the appeal under Section 37 of the Act was approached on 05.10.2023, however, it is claimed that on 16.11.2023, ASGI allotted the case to the said counsel, the counsel sought complete correspondence on 20.11.2023, which are made available on 28.11.2023, whereafter the Central Government Counsel took time in drafting the appeal, which has ultimately been filed on 20.12.2023.

5. Submissions have been made that delay may be condoned in the interest of justice, which is bona fide and unintentional otherwise the appellant would suffer a great and irreparable loss.

6. Objection to the application seeking condonation of delay has been filed by the respondents. Submissions have been made that the appellant had full knowledge of the proceedings before the Commercial Court, Jhansi and that of judgment dated 12.10.2022, story has been cooked up to cover the negligence and laches. The delayed appeal has been filed to deprive the respondents from the fruits of the arbitral award and filing of the appeal is misuse of legal procedure and therefore, the same is liable to be dismissed.

7. A rejoinder affidavit has been filed on behalf of the appellant reiterating the submissions made in the application and accusing the counsel

representing the appellant in not informing about the decision on application under Section 34 of the Act.

8. This Court, on 05.11.2024, noticed the claim of the appellant that it was not informed of the judgment and order dated 12.10.2022 and only on receipt of the show cause notice in the execution proceedings on 17.08.2023 that it came aware of the passing of the judgment by the Commercial Court, Jhansi and that in the material produced along with the application seeking condonation of delay, a recommendation to take suitable action against the Government Counsel for his casual approach in dealing with the subject matter was noticed on which counsel for the appellant was granted time to indicate if at all the said indication against the counsel has been followed.

9. A supplementary affidavit has been filed annexing a copy of letter dated 24.02.2024 making the recommendation for action against the counsel representing the appellant before the Commercial Court, Jhansi. However, as to the result of the said recommendation, the counsel for the appellant is unaware, however, counsel for the respondents informs that the counsel continues to represent the appellants.

10. Learned counsel for the appellant made submissions that the delay occurred only on account of the counsel representing the appellant not informing the decision on the application under Section 34 of the Act and for the action/inaction of the counsel, the appellant cannot be punished and therefore, the delay in filing the appeal deserves to be condoned.

11. Counsel for the respondents opposed the submissions. It was submitted that present is an example of negligence and laches on part of the appellant in filing the appeal. Further submissions have been made that the order was passed by the Commercial Court on 12.10.2022 and it is claimed that on 17.08.2023, the appellant became aware of passing of the said order, still the appeal has been filed on 20.12.2023, i.e., after four months, i.e., a delay of more than 100 days even from the date of knowledge. The explanation for the delay is ex-facie baseless and only indicates the laidback attitude of the officers of the appellant without caring for the compliance of the award though execution proceedings are pending. Submissions have been made

that Hon'ble Supreme Court has repeatedly laid down that the delay in case of arbitration appeals cannot be condoned by way of routine and therefore, the application seeking condonation of delay deserves to be dismissed. Reliance was placed on State of **State of Uttar Pradesh & Others Vs. M/s. Satish Chand Shivhare & Brothers : 2022 SCC Online SC 2151** and **Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Pvt. Ltd. : (2021) 6 SCC 460**.

12. We have considered the submissions made by counsel for the parties and have perused the material available on record.

13. A perusal of the application seeking condonation of delay, as noticed hereinbefore, reveals that the appellant has primarily accused the counsel representing the appellant before the Commercial Court in proceedings under Section 34 of the Act in not informing the dismissal of the application on 12.10.2022 and only on receiving the notice in the execution proceedings on 17.08.2023 that it became aware of the order dated 12.10.2022.

14. If the said assertion made by the appellant is taken at the face value, it is apparent that since 12.10.2022 till 17.08.2023, the appellant/officer of the appellant did not contact its counsel to find out the status of the case. The dates before the Commercial Court are regularly fixed and therefore, the negligence, on part of the appellant, is writ large on record. It is very convenient to accuse the lawyer of not informing the proceedings in the case/outcome of the proceedings, however, in an organization like the appellant, which have designated post for looking after the court cases, to claim that they were not made aware of the passing of the judgment by the counsel, cannot be countenanced. Hon'ble Supreme Court in the case of **Rajneesh Kumar and another Vs. Ved Prakash : 2024 INSC 891**, on the said aspect, has observed as under:

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the

judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief."

15. Further, even if the plea raised is accepted on its face value, the appellant became aware of the passing of the judgment on 17.08.2023 and thereafter also it has taken more than 120 days in filing the appeal for which, as noticed from the dates indicated hereinbefore, there is no explanation. It would be seen that on the one hand it is claimed the appellant had already approached the counsel on 05.10.2023 to file the appeal vide annexure No. 9 to the application, in the same affidavit, it is averred that on 16.11.2023, the ASGI allotted the case to the said counsel, which is in terms contradictory, as if the allotment took place on 16.11.2023, how could the appellant approach the counsel on 05.10.2023 itself. While the letter dated 05.10.2023 has been annexed, the allotment on 16.10.2023 is deliberately missing, which clearly reflects that the appellant is seeking to manipulate the dates for the purpose of seeking condonation of delay in filing the appeal. The delay of 375 days remains wholly unexplained.

16. The lethargic attitude on the part of the State and its instrumentalities has been frowned upon by Hon'ble Supreme Court in **Postmaster General v. Living Media India Ltd. : (2012) 3 SCC 563** wherein, while dealing with the appeals filed on behalf of the State, by its agencies and government bodies, it was, inter alia, observed as under:

"29. 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 bonafide 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.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

17. The issue with regard to the extent of condonation of delay in filing of the appeals under Section 37 of the 1996 Act came up before the Hon'ble Apex Court in **Government of Maharashtra vs. Borse Brothers Engineers and Contractors Private Limited : (2021) 6 SCC 460**, wherein following was observed:

"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(1A) 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."

18. Yet in another decision emanating from the proceedings under Section 37 of the 1996 Act wherein similar defence was sought to be taken by the State in preferring appeal beyond the statutory period the Hon'ble Apex Court in the case of **State of Uttar Pradesh & Others Vs. M/s. Satish Chand Shivhare & Brothers : 2022 SCC Online SC 2151** held as under:

"17. The explanation as given in the affidavit in support of the application for condonation of delay filed by the petitioners in the High Court does not make out sufficient cause for condonation of the inordinate delay of 337 days in filing the appeal under Section 37 of the Arbitration and Conciliation Act. The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause. The Government Departments are under an obligation to exercise due diligence to ensure that their right to initiate legal proceedings is not extinguished by operation of the law of limitation. A different yardstick for condonation of delay cannot be laid down because the government is involved."

19. Recently, Hon'ble Supreme Court, in **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others : Civil Appeal No. 11794 of 2025**, decided on 12.09.2025, after scanning the entire law on the subject, observed as under:

"262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy."

The constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.

263. Limitation periods are prescribed to maintain a sweeping scope for the lis to attain for finality. More than the importance of judicial time, what worries us is the plight of a litigant with limited means, who is to contest against an enormous State, and its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold, because, say if a party litigating against the State, for whatever reason, is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the lis for another round of litigation, and leaves such litigant listless yet again. As courts of conscience, it is our obligation that we assure that a litigant is not sent from pillar to post to seek justice.

264. No litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law."

20. From the above, it is apparent that no case for condonation of delay is made out. The application is, therefore, dismissed. Consequently, the appeal is also dismissed.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

March 18, 2026

Mukesh Pal