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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2824 of 2017**

Bilaspur Municipal Corporation through its Commissioner, Vikas Bhawan, Near Nehru Chowk, Bilaspur, District Bilaspur (C.G.)

---- **Petitioner****Versus**

1. Meinhardt Singapore Pvt. Ltd. (India Branch), having corporate office at A-8, Sector-16, Noida 201 301 (U.P.)
2. Chief Executive Officer, State Urban Development Authority, 3rd Floor, RDA Building, Raipur (C.G.)
3. Department of Urban Administration and Development, through Secretary, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
4. Mayor-in-council through Mayor, Bilaspur Municipal Corporation, Vikas Bhawan, Near Nehru Chowk, Bilaspur, District Bilaspur (C.G.)

---- **Respondents**

For Petitioner	: Shri Kishore Bhaduri & Shri Anumeh Shrivastava, Advocate.
For Respondent No.1	: Shri S.C. Verma & Sandeep S. Tiwari, Adv.
For State	: Shri Dheeraj Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****03/11/2017**

(1) The Arbitral Tribunal passed an award on 30th July, 2016 resolving the arbitral dispute between the parties and thereby granting an award of Rs. 2,03,51,000/- in favour of respondent No.1 and against the petitioner-Corporation.

(2) Feeling aggrieved against the award passed by the Arbitral Tribunal, petitioner herein preferred an application under Section 34(2) of

the Arbitration & Conciliation Act, 1996 (for short “Act of 1996”) and also filed an application under Section 5 of the Limitation Act as the application was barred by 11 months and 29 days before the Commercial Court (District Level), Naya Raipur.

(3) By the impugned order, Commercial Court (District Level), rejected the application filed under Section 34 of the Act, 1996 holding that application under Section 34 of the Act, 1996 along with application under Section 5 of the Act, 1963 is not maintainable and further held that Commercial Court cannot entertain the application after the period of 120 days from the date of receipt of the award.

(4) Feeling aggrieved & dissatisfied with the order of Commercial Court (District Level), the petitioner preferred instant writ petition under Article 226 of the Constitution of India stating that delay caused in preferring application under Section 34 of the Act, 1996 be condoned and matter be remanded back to the Commercial Court for consideration on merits as the case in hand involves great public importance and huge public money.

(5) Mr. Kishore Bhaduri, learned counsel appearing for the petitioner would submit that the delay in filing the application occurred due to procedural requirements mandatory to be fulfilled before proceeding ahead with the filing of the appeal, which is purely bonafide in nature. He further submits that since huge amount of public money is involved in this case, the delay in filing the application be condoned in exercise of jurisdiction of this Court under Article 226 of the Constitution of India. He placed reliance upon the judgment of the Supreme Court in the matter of

D.R. Industries Ltd. and another Vs. Union of India & others¹ in support of his case.

(6) Mr. Sandeep Tiwari, learned counsel appearing for respondent No.1 would submit that the impugned order passed by the learned Commercial Court rejecting application under Section 34(2) of the Act, 1996 on the ground of limitation is appealable under Section 13 (I) of the Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts Act, 2015 (henceforth “Act, 2015”), therefore, the appeal as framed and filed is not maintainable. He would further submit that when the petitioner’s remedy is barred by limitation under the Act of 1996, the extraordinary jurisdiction under Article 226 of the Constitution of India cannot be invoked to condone the delay and, as such, the writ petition deserves to be dismissed.

(7) I have heard learned counsel appearing for the parties on the question of admission of the writ petition.

(8) Admittedly, the petitioner’s application under Section 34(2) of the Act, 1996 has been dismissed as barred by limitation, which was filed after 120 days from the date of receipt of the certified copy of the award, as the court has no jurisdiction and authority to condone the delay beyond the period prescribed under Section 34(3) of the Act, 1996 and in that case, application under Section 5 of the Limitation would not be applicable (See **Union of India Vs. Popular Construction Co.² & Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department & others³**)

¹ Special Civil Application No.4973 of 2006, decided on 13.03.2008

² (2001) 8 SCC 470

³ (2008) 7 SCC 169

(9) The Arbitration and Conciliation Act, 1996, which consolidates, amends and designs law relating to arbitration to bring it as much as possible in harmony with unicitral model law must as held to be self contained code. (See **Fuerst Day Lawson Limited Vs. Jindal Exports Limited⁴** & **Mahanagar Telephone Nigam Limited Vs. Applied Electronics Limited⁵**).

(10) The question for consideration is whether jurisdiction under Article 226 of the Constitution of India can be exercised to condone the delay, which is expressly barred by Section 34(3) of the Act, 1996.

(11) It is well settled that jurisdiction of this Court under Article 226 of the Constitution of India is not so wide as to resurrect a cause of action, which has become unenforceable on account of the law of limitation and cannot be invoked against the express statutory provision.

(12) In the matter of **The Commissioner of Sales Tax, U.P., Lucknow Vs. M/s. Parson Tools and Plants, Kanpur⁶**, the Supreme Court has held that judicial power can never be exercised for the purpose of giving effect to the will of the Judges. Relevant paragraphs of the report state as under:-

“15. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales-tax Act, cannot be imported into

4 (2011) 8 SCC 333

5 (2017) 2 SCC 37

6 (1975) 4 SCC 22

it by analogy. An enactment being the will of the Legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded “accordance to the intent of them that made it”. “The will of Legislature is the supreme law of the land, and demand perfect obedience”. “Judicial power is never exercised”, said Marshall, C.J. of the United States, “for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature ; or in other words, to the will of the law”.

16. If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so “would be entrenching upon the preserves of Legislature”, the primary function of a court of law being *jus dicere* and not *jus dare*.”

(13) In the matter of **Commissioner of Customs and Central Excise Vs. Hongo India Private Limited and another**⁷, their Lordships of the Supreme Court have held that time-limit prescribed under Section 35-H(1) of the Central Excise Act, 1944 to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act and held as under:-

“36..... It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.”

7 (2009) 5 SCC 791

(14) In the matter of **Singh Enterprises Vs. Commissioner of Central Excise Jamshedpur**⁸, their Lordships of the Supreme Court have held that writ petition was sought to be invoked against the rejection of an appeal on the ground of limitation. To condone the delay beyond prescribed period, their Lordships held that the limitation is provided in the statute and the power to condone the delay is also vested on the statutory authority though circumscribed by the maximum period, even the High Court should not direct the condonation as it would render the specific provision otiose in these words and held as under:-

“8. The Commissioner of Central Excise (Appeal) as also the Tribunal creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first provision to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the

8 2008 Vol. 221 Excise Law Times 163

period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.

(15) In the matter of **Nasiruddin and others Vs. Sita Ram Agarwal**⁹, three judges bench of the Supreme Court has categorically held that the Court can condone the default only when the statute confers such power on the Court and not otherwise.

(16) The Supreme Court in the matter of **Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & others**¹⁰ has held that Article 226 is not meant to short-circuit or circumvent statutory procedures.

(17) Dealing with the similar proposition, Kerala High Court in the matter of **Assistant Commissioner of Central Excise V. Krishna Poduval**¹¹ has held as under:-

“..... In so far as the respondents have not taken up the original orders imposing penalty in appeals before the appellate authority within the maximum period prescribed under Section 85(3) of the Finance Act, they cannot get the appeals revived and heard on merits by resorting to the discretionary remedy before this Court under Article 226 of the Constitution of India. Once the period of limitation has run itself out and the appellate authority does not have

9 (2003) 2 SCC 577

10 (1985) 1 SCC 260

11 2005 (4) K.L.T. 947

power to condone the delay in filing the appeals beyond the maximum period prescribed under the Act, the remedies of the appellants come to an end just like in the case of a time-barred suit and the respondents cannot, by invoking the discretionary remedy under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, resurrect their unenforceable cause of action and require this Court to consider their contentions against the original orders on merit. That would amount to defeating the very law of limitation which we are not expected to do under Article 226. If we are to entertain the contentions of the respondents on merits, that would amount to negating the law of limitation which we have no jurisdiction to do under Article 226. If we are to entertain the contentions of the respondents on merits, that would amount to negating the law of limitation which we have no jurisdiction to do under Article 226 and which may even lead to anomalous results. We are not satisfied that the jurisdiction of this Court under Article 226 of the Constitution of India is so wide as to resurrect a cause of action which has become unenforceable on account of the law of limitation. Further, we are of the firm opinion that the jurisdiction under Article 226 of the Constitution of India cannot be invoked against express statutory provisions, however, harsh the effect of the provisions may be on an assessee or litigant.”

(18) Going by the aforesaid principle of law laid down by the Supreme Court as well as the Kerala High Court, it is quite vivid that extraordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised to revive the claim which is barred by limitation under the Act of 1996 and the jurisdiction under Article 226 of the Constitution of India cannot be invoked to circumvent express statutory provision.

(19) Reverting back to the facts of the case, it is apparent that the petitioner instead of invoking appellate jurisdiction under Section 13(I) of the Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts Act, 2015, has approached this Court under Article 226 of the Constitution of India for condoning the delay in filing the application under Section 34(2) of the Act, 1996, as such, the writ petition as framed and filed is held to be not maintainable as power and jurisdiction under Article 226 of the Constitution of India cannot be allowed to be invoked to circumvent express statutory provision contained in Section 34(3) of the Act, 1996 and the same is accordingly dismissed. Decision relied upon by Mr. Bhaduri, counsel for the petitioner in the matter of **D.R. Industries Ltd Vs. Ravi R. Tripathi** passed by High Court of Gujarat at Ahmedabad on 13.3.2008 is clearly distinguishable to the facts of this case as in the said case only liberty to file writ petition was granted dismissing to challenge the constitutional validity of the provision to sub-section (1) of Section 35 of the Central Excise Act, 1944.

(20) As a fallout and consequence of the aforesaid discussion, the writ petition is liable to be and is hereby dismissed at admission stage leaving the parties to bear their own costs. However, dismissal of the petition would not bar the petitioner to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-