

**HIGH COURT OF CHHATTISGARH, BILASPUR****Arbitration Appeal No. 65 of 2016**

M/s. Maa Jay Ambey Rice Mill Neora, District Raipur (C.G.),  
Through the partner Praveen Agrawal, Age 52 years, S/o Shri  
Shyam Sunder Agrawal, R/o Tilda-Neora, P.S. Neora, District  
– Raipur (C.G.) .... Applicant

**---- Appellant**

**Versus**

1. Madhya Pradesh Civil Supply Corporation Ltd. Through  
Managing Director, Bhopal (M.P.)
2. Chhattisgarh State Civil Supplies Corporation Limited,  
Through Managing Director – Raipur, Katchahary Chowk,  
Raipur, District – Raipur (C.G.)
3. Shri M.K. Roaut (Arbitrator), Secretary Chhattisgarh State  
Food & Civil Supplies and Consumer Protection Department  
Dau Kalyan Singh Bhawan, Raipur (At present – Mahanadi  
Bhawan, Mantralaya Naya Raipur) District- Raipur (C.G.)  
..... Non-applicants

**---- Respondents**

**Arbitration Appeal No. 66 of 2016**

M/s. Gurudev Rice Mill, Gariyaband District- Raipur (C.G.),  
Through the Proprietor Lalit Agrawal, Age 45 years, S/o Shri  
Laxmi Narayan Agrawal, R/o Subhash Ward, Neora, No.15,  
P.S. Neora, District – Raipur (C.G.)

**---- Appellant**

**Versus**

1. Madhya Pradesh Civil Supply Corporation Ltd. Through  
Managing Director, Bhopal (M.P.)
2. Chhattisgarh State Civil Supplies Corporation Limited,  
Through Managing Director – Raipur, Katchahary Chowk,  
Raipur, District – Raipur (C.G.)
3. Shri M.K. Roaut (Arbitrator), Secretary Chhattisgarh State  
Food & Civil Supplies and Consumer Protection Department  
Dau Kalyan Singh Bhawan, Raipur (At present – Mahanadi  
Bhawan, Mantralaya Naya Raipur) District- Raipur (C.G.)  
..... Non-applicants

---- Respondents

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|-----------------|---|----------------------------|
| For Appellant   | : | Mr. J.N. Nande, Advocate.  |
| For Respondents | : | Mr. V.R. Tiwari, Advocate. |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**30/06/2017**

(1) Both the arbitration appeals involve common facts and common question of law and, as such, they are being heard and disposed of by this common order.

(2) The short question involved for consideration in these arbitration appeals is whether learned District Judge while exercising his jurisdiction under Section 34 (2) of the Arbitration and Conciliation Act, 1996 (henceforth "Act, 1996") is empowered to condone the delay of more than 30 days in filing the application under Section 34(2) of the Act, 1996.

(3) Essential facts requisite to answer the question involved herein are as under :-

(3.1) The arbitral tribunal passed an award on 31.03.2006 in favour of the appellants herein granting an amount of Rs. 41,88,91.31/- & 9,94,796.25/-, respectively.

(3.2) The appellants, being dissatisfied with the awards, filed application for review before the arbitral Tribunal on 28.04.2006. These applications were allowed by order dated 31.01.2007; and thereafter appellants again preferred second review petition

before the Appellate Tribunal; that have been rejected by order dated 19.03.2007.

(3.3) Thereafter, challenging the arbitral award dated 31.03.2006, and order allowing their review application dated 31.01.2007 and rejecting their second review application dated 19.03.2007, application under Section 34(3) of the Act, 1996 was filed before the learned District Judge on 13.11.2007 by the appellants herein.

(4) By the impugned order dated 08.04.2016 & 11.04.2016, respectively, learned District Judge has rejected the said applications filed by the appellant holding that the said applications are hit by Section 34(3) of the Act, 1996 as the Court is not empowered to condone the delay of more than 30 days after prescribed period of three months.

(5) Calling in question the legality, validity and correctness of the aforesaid award and the order rejecting review application, these arbitration appeal have been preferred by the appellants questioning the same.

(6) Mr. J.N. Nande, counsel for the appellants in both the cases would submit that order passed by the learned District Judge is bad and illegal and, as such, delay can be condoned while hearing the application under Section 34(3) of the Act, 1996 and, therefore, the learned District Judge is absolutely unjustified in rejecting the application under Section 34(3) of the Act, 1996 as barred by limitation.

(7) Per contra, counsel for the respondents would support the order impugned and submit that the learned District Judge is not empowered to condone the delay of more than 30 days, as such, the order passed by the learned District Judge is absolutely justified, which does not call for any interference by this Court in these arbitration appeals.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(9) In order to ascertain the correctness at the bar, it would be appropriate to notice under Section 34(3) of the Act, 1996, which reads as under:-

“34(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

(10) A careful perusal of the aforesaid provision would show that the limitation prescribed is three months and the court is empowered to condone the delay for a period of another 30 days thereof i.e. total 3 months + 30 days; and thereafter further delay cannot be condoned by the Court.

(11) The Supreme Court in the matter of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others** reported in **(2008) 7 SCC 169** while dealing with Section 34(3) of the Act, 1996 has clearly held that the proviso to Section 34(3) of the Act, 1996 being a specific legislation excludes applicability of general provisions contained in Section 5 of the Limitation Act and, therefore, the Court has no discretion to extend limitation beyond 30 days prescribed in proviso to Section 34(3) even if sufficient cause is shown for it and observed as under:-

“20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only in so far as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the

provisions of Section 29(2) of the Limitation Act.”

(12) Justice R.V. Raveendran in his concurring judgment held as under:-

“53. Sub-Section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the Court discretion to extend the period of limitation by a further period not exceeding thirty days if the Court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “ but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34 (3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the Court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-Section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34 (3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.”

(13) The principal of law laid down by the Supreme Court in the matter of **Consolidated Engineering** (Supra) has been followed with approval by the Division Bench of this Court in the matter of **Kiran Ram Thakur Vs. State of Chhattisgarh & others** (W.A.

No.349 of 2016 decided on 22.08.2016).

(14) In light of the principle of law laid by their Lordships of the Supreme Court in the matter of **Consolidated Engineering** (Supra), if the facts of the case are examined, it would appear that award was passed on 31.03.2006 whereas application for setting aside award was filed on 13.11.2007; and it is not the case of the appellants that the copy of award was not served to them and, therefore, after receipt of copy of the award, application is filed, rather they preferred two review petition, which were rejected on 19.03.2007 and only, thereafter, about delay of seven months application for setting aside award was filed, I am of the opinion that appellants' application were clearly hit by Section 34(3) of the Act, 1996 and the learned District Judge has rightly held that the Court is not empowered to condone the delay of more than 30 days beyond period of three months.

(15) In view of the aforesaid discussion, I do not find any illegality in the order of learned District Judge rejecting the application under Section 34(3) of the Act, 1996.

(16) Accordingly, the arbitration appeal being without substance are liable to be and are hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-

