

HIGH COURT OF CHHATTISGARH AT BILASPUR**Arbitration Appeal No. 23 of 2020**

M/s Maneesh Pipes Pvt. Ltd., through its Director Jagdish Jhavar, Aged about 60 years, Having its office at Merlin Jai Shri Vihar, Pandri Tarai, Raipur, Tahsil and District Raipur, Chhattisgarh.

---Appellant

Versus

1. The State of Chhattisgarh, through the Dy. Secretary, Public Health Engg. Department, Mantralaya, Naya Raipur, Chhattisgarh.
2. The State of Chhattisgarh, through the Chief Engineer, Public Health Engg. Department, Neer Bhawan, Raipur, Chhattisgarh.
3. The State of Chhattisgarh, through the Executive Engineer, P.H.E. Project Division, Raipur, Chhattisgarh.

---Respondent

For Appellant :- Mr. Vivek Chopda, Advocate
 For Respondents/State :- Mr. Sunil Otwani, Addl. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

22.10.2021

Sanjay K. Agrawal, J

1. This appeal has been preferred by the appellant under Section 37 of the Arbitration and

Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 as amended by Amendment Act, 2018 against the impugned order dated 23/09/2019 passed by the Commercial Court in M.J.C. No. 04/2018 along with I.A. No. 1, application under Section 5 of Limitation Act for condonation of delay in filing the appeal as the instant appeal is barred by 84 days.

2. In the said application for condonation of delay, it has been pleaded by the appellant that he approached his counsel for filing of the instant appeal and also handed over the entire file to his counsel, however, the same was misplaced by the office of the counsel and after reconstructing the file, the appeal has been filed with a bona fide delay of 84 days. It has also been pleaded that the mother of the appellant had to go through spine surgery and therefore, the appeal could not be filed right in time, as such, the delay of 84 days in filing the appeal, being bona fide, deserves to be condoned.

3. Reply has been filed by the respondents/State to the application for condonation of delay stating inter alia that the appeal has been filed with an inordinate delay of 84 days and it is barred by

limitation, as such, it cannot be entertained and deserves to be dismissed on the ground of delay.

4. Mr. Vivek Chopda, learned counsel for the appellant, would submit that recently, in the matter of Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited¹ the Supreme Court has held that though the provisions of Limitation Act would not be applicable but by way of exception, the short delay can be condoned. He would rely upon paragraph 63 of the judgment and submit that though in that case, sufficient cause was not shown and the application for condonation of delay was rejected, however, in the instant case, sufficient cause has been shown for delay of 84 days in filing the appeal, as such, the application for condonation of delay be allowed and the delay of 84 days in filing the appeal be condoned in light of the aforesaid judgment rendered by the Supreme Court.

5. Mr. Sunil Otwani, learned Additional Advocate General, would submit that in the matter of Borse Brothers Engineers and Constructors Pvt. Ltd.

¹ (2021) 6 SCC 460

(supra) itself, the Supreme Court has held the delay of 75 days to be a long delay and declined to condone it, as such, the inordinate delay of 84 days in the instant case, that too, without showing sufficient cause, cannot be condoned.

6. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. The question that arises for consideration in this appeal is whether the instant appeal preferred by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 with a delay of 84 days can be condoned in absence of provisions in the Arbitration and Conciliation Act/the Commercial Courts Act ?

8. The aforesaid question came to be considered by the Supreme Court in the matter of **Borse Brothers Engineers and Constructors Pvt. Ltd.** (supra) wherein their Lordships of the Supreme Court formulated four questions including the following two questions :-

"1 to 2 xxx xxx xxx xxx

3. Whether delay in filing the appeal under Section 37 of the A&C Act, 1996 can be condoned, and if so to what extent ?

4. Whether, application of Section 5 of the Limitation Act to condone delay in filing an appeal under Section 37 of the A&C Act, 1996 is excluded by the scheme of the Commercial Courts Act ?”

9. Thereafter, their Lordships considered the issue and concludingly held in paragraph 23 of the judgment that Section 37 of the Arbitration and Conciliation Act read with Section 43 of the Act makes it clear that the provisions of Limitation Act will apply to appeals that are filed under Section 37 and further held that there can be no doubt whatsoever that Section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of Section 43 of the Arbitration and Conciliation Act, 1996 and by virtue of Section 29(2) of the Limitation Act. Para 23 of the report states as under:-

“23. Section 37 of the Arbitration Act, when read with Section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under Section 37. This takes us to Articles 116 and 117 of the Limitation Act, which provide for a limitation period of 90 days and 30 days, depending upon whether the appeal is from any other court to a High Court or an intra-High Court appeal. There can be no doubt whatsoever that Section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of Section 43 of the

Arbitration Act and by virtue of Section 29(2) of the Limitation Act."

10. As such, in an appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996, delay in filing the appeal can be condoned.
11. The next question that arises for consideration is whether the provisions of Section 5 of the Limitation Act, to condone the delay in filing the appeal under Section 37 of the Arbitration and Conciliation Act read with Section 13 of the Commercial Courts Act, is excluded by the scheme of Commercial Courts Act ?
12. This issue has also been answered by their Lordships of the Supreme Court in the matter of **Borse Brothers Engineers and Constructors Pvt. Ltd.** (supra), wherein it has authoritatively been held in paragraph 63 as under :-

"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."

13. As such, it has been held by their Lordships that the 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 short delay beyond 90 days, 30 days or 60 days respectively in the discretion of Court, can be condoned by way of exception and not by way of rule.
14. Now the question is whether the appellant herein has made out a case for condonation of delay in terms of paragraph 63 of the decision rendered by the Supreme Court in the matter of **Borse Brothers Engineers and Constructors Pvt. Ltd.** (supra) ?
15. In the application filed by the appellant under Section 5 of the Limitation Act for condonation of delay along with the appeal, the following pleadings have been made in paragraphs 2 and 3 :-
 - "2) That, after the order passed by the learned court below the Appellant has approached his counsel for filing of the instant appeal and has also handed over the entire file to the counsel however the same was misplaced by the office of the

counsel and after reconstructing the same the instant appeal is being filed for which no fault is attributable to the appellant and the delay caused is thus bonafide and not deliberate.

3) The appellant says and submits that it was also the reason for delay that the mother of the Appellant had to go through various ailments and he had to take her mother for treatment to New Delhi and the entire month of December 2019 and thereafter the appellant had to go for various followups after the spine surgery of the mother and hence the appellant was with her mother and could not thus contact his counsel for preparation of the appeal and therefore also there was some delay which is also bonafide and not deliberate and hence the delay deserves to be condoned."

16. A careful perusal of paragraph 2 of the application for condonation of delay would show that the first ground raised on behalf of the appellant is that the file was handed over to the counsel and the same was misplaced and its reconstruction took time, therefore, delay occurred in filing the appeal. No such detail with regard to the date of handing over the file to the counsel has been given and no other detail has been provided to support the said averment. Similarly, neither any medical certificate has been filed nor any other details have been given to suggest that on account of medical reasons, the appeal could not be preferred right in time. As such, appellant herein has failed to show

sufficient cause to condone the long delay of 84 days in filing the instant appeal. Accordingly, the application for condonation of delay in filing the appeal is hereby rejected. Consequently, the instant arbitration appeal also stands dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Sd/-

(Arvind Singh Chandel)

Judge

Harneet