

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.8 of 2017
(Through hybrid mode)**

Union of India

....

Appellant

Mr. P. K. Parhi, ASG
Mr. J.Nayak, CGC
Mr. S.S.Mohapatra, Advocate

-versus-

M/s. D.K. Construction

....

Respondent

Mr. G.M.Rath, Advocate
Mr. B.Mohanty, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
14.02.2022**

**ARBA No.8 of 2017
&
Misc. Case No.18 of 2017.**

Order No.

06. 1. Mr. Mohapatra, learned advocate appears on behalf of appellant and submits Misc. Case no.18 of 2017 is application for condonation of delay. The delay in filing the appeal was 126 days. He submits, explanation for the delay is given in paragraph 3 of the application. Departmental requirements caused the delay.
2. Mr. Rath, learned advocate appears on behalf of respondent and relies on judgment of Supreme Court in **Government of Maharashtra (Water Resources Department) v. Borse Brothers**

Engineers and Contractors Pvt. Ltd. reported in (2021) 6 SCC 460 paragraph 65. He submits, almost exactly same explanation for condonation of delay of 75 days was considered to be without sufficient cause and, inter alia, condonation granted by the High Court was set aside. He submits further, there was delay in executing the contract. Penalty was imposed by the railway. In the reference, there was award for refund of penalty amount deducted from his client's bills. The tribunal consisted of arbitrator nominated by appellant. Factual findings regarding cause for time overrun in execution of the contract was found to be with appellant.

3. It appears from **Borse Brothers** (supra) that the Supreme Court first dealt with merits of the appeal. The appeal was allowed on both grounds, including challenge to condonation of delay granted by the High Court. In the circumstances, merits of the matter was also looked at by this Court.

4. The District Court was not satisfied that any ground under section 34 of Arbitration and Conciliation Act, 1996 was made out regarding challenge to the award. Appellant also could not demonstrate erroneous application by the District Judge.

5. The application for condonation of delay is allowed. The arbitration appeal is dismissed. Mr. Mohapatra submits, his client be

given a month's time to take appropriate steps, for which the execution launched by respondent, be pended.

6. The appeal stands dismissed. Appellant must pray for stay of execution before the executing Court.

(Arindam Sinha)
Judge

Prasant

