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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ARBITRATION APPEAL NO.105 OF 2020

NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT
IMPLEMENTATION UNIT, JALGAON THR. IT'S PROJECT
DIRECTOR C.M. SINHA
VERSUS
AVINASH PURUSHOTTAM SUPE

WITH
ARBITRATION APPEAL NO.109 OF 2020

NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT
IMPLEMENTATION UNIT, JALGAON THR. IT'S PROJECT
DIRECTOR C.M. SINHA
VERSUS
PARAS VISHWANATH BAGAL & ANR.

WITH
ARBITRATION APPEAL NO.111 OF 2020

NATIONAL HIGHWAYS AUTHORITY OF INDIA, PROJECT
IMPLEMENTATION UNIT, JALGAON THR. IT'S PROJECT
DIRECTOR C.M. SINHA
VERSUS
BALKRUSHNA KASHIRAM CHAUDHARI

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Mr D. S. Manorkar, Advocate for appellants;
Mr Kumar Gaurav M. More, Advocate for respondents

CORAM : SMT. BHARATI DANGRE, J.

DATE : 19th January, 2022

PER COURT:

1. All the three appeals pose challenge to identical orders passed by the learned District Judge, involving identical dates,

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and in support of the appeals, I have heard the learned Counsel Shri. D. S. Manorkar appearing for the appellants and the learned Counsel Shri. Kumar Gaurav More for the respondents.

2. By the present arbitration appeals, instituted under Section 37 of the Arbitration and Conciliation Act, 1996 (the 'Act of 1996'), the appellants, the National Highways Authority of India, Project Implementation Unit, Jalgaon, raise a challenge to a decision at the hands of the Principal District Judge, Jalgaon in Civil M. A. Nos.383/2019, 334/2019 and 372/2019, respectively, thereby rejecting the applications filed by the appellants along with the appeals filed under Section 34 of the Act of 1996, seeking condonation of delay, in setting aside the Arbitration Award dated 15/01/2019, passed by the learned Arbitrator and District Collector, Jalgaon in Case Nos.1105/2015, 608/2015 and 1077/2015.

Shorn of unnecessary details, it would suffice to state that the lands of the respondents was acquired for widening of the National Highways No.6 by the competent authority (land Acquisition and Special Land Acquisition Officer, Jalgaon), vide award dated 15/01/2019. The Central Government appointed the

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District Collector, Jalgaon as the Arbitrator for dealing with the matters under Section 3-G(5) of the National Highways Act in respect of the acquisition made for widening of National Highway No.6. The respondents filed an application for enhancement of compensation and the learned Arbitrator passed three distinct awards on 15/01/2019, under which the claimants were held entitled for enhanced compensation for acquired area, and they were also held entitled for interest at the rate of 9% p.a. on the enhanced amount. The competent authority was directed to deposit the said amount along with interest within seven days.

3. On the awards being passed, the certified copy was received by the Appellant on 17/01/2019 and since the limitation began to run from the said date and the appellant, after going through the procedural formalities of obtaining permission to file an application, challenging the Arbitral Award, the Project Director, National Highways Authority, Jalgaon was instructed to challenge the arbitral awards on 10/04/2019. The procedural rigmarole consumed sometime and the Appeal under Section 34, could not be filed within prescribed period of three months, as prescribed under Section 34(3) of the Act of 1996, which expired on 17/04/2019. The Appeal could not be filed within grace period of

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30 days also, as the said period also expired on 17/05/2019. Since the period of 30 days prescribed under the Proviso to Section 34(3) expired within the period of summer vacation of the Court, the application came to be filed on the first reopening day of the Court after the vacation i.e. on 03/06/2019, alongwith an application for condonation of delay of 30 days with a specific pleading as under :-

*“6. It is respectfully submitted that as per Section 34 (3) of the Arbitration and Conciliation Act, 1996, an Award has to be challenged within 3 months plus another 30 days from the date of receipt of the Award. The limitation of 30 days expired on 17.05.2019 i.e. during the summer vacation of this Hon’ble Court. It is respectfully submitted that, since the Hon’ble Court was closed due to summer vacation, the present application is filed first day of opening (after vacation) of this Hon’ble Court I.e on 03.06.2019. It is respectfully submitted that this Civil M. A. has been filed on **03/06/2019, thus, there is delay of 30 days** in filing the same which may be condoned in the interest of justice. It is respectfully submitted that, the Applicant has therefore, made out a sufficient cause for condonation of delay in filing this Civil M. A. It is respectfully submitted that the delay is not on account of any*

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deliberate negligence or in action, but on account of circumstances beyond the control of the Applicant.”

4. In the wake of said sequence of events, the question that arose for determination before the learned District Judge was whether the application seeking condonation of delay preferred by the applicant/Appellant is maintainable under the proviso of Section 34(3) for extension of period of 30 days, and this application has been turned down by relying upon the decision of the Hon'ble Apex Court in case of **Assam Urban Water Supply & Sew. Board Vs. Subhash Projects & Marketing Ltd., 2012 (2) SCC 624**. The impugned order placing reliance upon the decision of the Hon'ble Apex Court, record that the period of 30 days mentioned in the proviso that follow sub-section 3 of Section 34 of the Limitation Act, 1963, is not the period of limitation and therefore, Section 4 of the Limitation Act, 1963 cannot be invoked in the given case to condone the period of limitation, when the grace period expired during the Court vacation. It is conclusively held in the impugned order that the application made on reopening day viz. 03/06/2019 was not within limitation and it ought to have been filed on or before 17/05/2019 and the benefit of summer vacation which is sought to be availed by the applicant

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by invoking provision of Section 4 of the Limitation Act, cannot be extended.

5. Another reason for the learned Judge in not entertaining the application is recorded in paragraph No.15 to the effect that if during summer vacation, the urgent matters are entertained and admitted and the least what was expected on the part of the applicant was to file such application and whether it could have entertained or not as urgent, was a different aspect. However, recording that the applicant made no effort, any indulgence in favour of the applicant, was refused.

6. The learned Counsel for the appellant urge by submitting that the awards in question came to be passed on 15/01/2019 and the certified copy of same was received on 17/01/2019. The submission advanced is, as per Section 34 (3) of the Arbitration and Conciliation Act 1996, the period of limitation prescribed for filing an application, seeking setting aside the arbitral award, is three months from the date of receipt of the arbitral award, which is further extended by another 30 days, if sufficient cause is shown. It is further submitted that Section 43 of the Arbitration and conciliation Act specifically provide that the Limitation Act,

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1963 shall apply to the arbitrations as it applies to proceedings in the Court and therefore, Section 4 of the Limitation Act, which adumbrate a general principle to the effect, that where the prescribed period of any suit, appeal or an application expire on a day, when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens.

The submission advanced is, the learned District Judge has erroneously held that Section 4 of the Limitation Act is not applicable in computing the period for filing application under Section 34 of the Act.

Further the reliance upon the decision of the Hon'ble Apex Court in case of Assam Urban Water Supply (supra) is also mis-founded, is the submission. In short, the learned Counsel for the appellant would submit that the protection of Section 4 of the Limitation Act is very well available to the applicant and therefore, application seeking condonation of delay ought to have been allowed, particularly in a case like this, where huge public exchequer is involved and the respondents did not deserve the enhanced compensation as the factors which are taken into

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account for granting the same are irrelevant, as the Arbitrator has erred in enhancing the market rates by astronomical enhancement to the rate awarded by the competent authority, without any credible evidence in support of the same. It is also sought to be argued that the arbitral award is in conflict with the public policy of India and therefore, merely on the technical ground that the appeal cannot be entertained, being beyond time limit, a erroneous awards are being confirmed, is the submission.

7. Per contra, the learned Counsel for the respondents submit that Arbitration and Conciliation Act, being a Special enactment, the limitation provided by the Statute must be construed strictly and when Section 34(3) prescribe for a period of limitation, the benefit of Section 4 of the Limitation Act, cannot be availed of and the learned Counsel would place reliance upon Section 29 (2) of the Limitation Act, in furtherance of his submission. Urging that the appellant cannot claim special privilege merely because it is the competent authority, the learned Counsel would submit that the provisions contained in Section 34 (3) of the Act 1996, must be strictly construed and since the period prescribed for filing of an application/appeal, for setting aside arbitral award being set out as period of three months from the date of receipt of the award,

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there is a failure to file the Appeal/Application within prescribed period of limitation and even it is not filed within grace period of 30 days, and hence benefit of Section 4 of the Limitation Act, 1963, which prescribe for extension of period of limitation, “when period of limitation prescribed” under the law expires, when the Court is closed, cannot come to their rescue, is the argument. The emphasis being lead on the word “period of limitation prescribed”. The learned Counsel would, therefore, submit that the impugned orders do not suffer from any illegality or perversity and falling perfectly within the four corners of law, they deserve to be upheld.

8. The dates mentioned above being not in dispute, I shall turn straight to the legal point which fall for consideration in the Appeals.

Chapter VII of the Arbitration and Conciliation Act provide for recourse against the arbitral award and Section 34 of the said Act prescribe that recourse to a Court against an arbitral award may be made only by an application filed for setting aside such an award, in accordance with the sub-section (2) and sub-section (3). Sub-section (2) set out the grounds on which the arbitral

award may be set aside and sub-section (3) prescribe the period within which the application for setting aside the award can be preferred and entertained. Sub-section (3) of Section 34 read thus:

“(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.”

9. The aforesaid provision contemplate, that an application for setting aside the award may not be made after three months have elapsed from the date on which the party has received the arbitral award, or from the date on which request has been disposed of by the Tribunal. The Section is appended with the proviso, which carve out an exception to the main provision, when it provide that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within a period of

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three months, it may entertain the application within further period of 30 days but not thereafter. The sub-section (3), therefore, prescribe the period of limitation, whereas the proviso provide for a further or an added period by way of grace, even when after period of limitation has expired, an application can be entertained, on showing sufficient cause, within further period of 30 days, but not thereafter.

The period of limitation is provided in Sub-section (3) of Section 34 and the proviso carve out an exception to the period of limitation prescribed. It being a settled position of law that Proviso is added to a main provision to accept something from clause or to limit it's applicability. As such, the function of a proviso is to qualify something or to exclude, something, from what is provided in the enactment which, but for proviso, would be within the purview of the enactment.

10. The Limitation Act, 1963, provide for limitation of suits and other proceedings and in Section 2(j), it define "period of limitation" as the period of limitation prescribed for any suit, appeal or application by the Schedule and "prescribed period" means the period of limitation computed in accordance with the

provisions of this Act. Section 3 of the Limitation Act, subject to the provisions in Sections 4 to 24, provide that, if suit is instituted appeal preferred and application made after prescribed period, shall be dismissed, although limitation has not been set up as defence. Limitation in instituting the proceedings, therefore, puts an embargo on the Court to entertain the suit if it is found to be barred by limitation. Section 3 makes it imperative and cast duty upon the Court to dismiss an application which is time barred, although limitation has not been set out as a defence. Sub-Section 4 of the Limitation Act carve out an exception to Section 3, which reads thus :

“4. Expiry of prescribed period when Court is closed.—
Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens.

Explanation.— A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

Another notable provision in the Limitation Act, is Section 29 in the form of ‘Savings’ and by sub-section (2) it provide as under :-

“(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were 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 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

11. In the wake of the aforesaid scheme contained in the Limitation Act, the question whether the proviso appended to Sub-section (3) of Section 34 of the Arbitration and Conciliation Act 1996, permit invocation of Section 4 of the Limitation Act, is the question that arise for consideration and this question is no more *res integra*, since the Hon’ble Apex Court has dealt with the said issue and answered the same in Assam Urban Water Supply (supra).

A similar contention raised came to be answered in paragraph 13 and 14 of the said judgment, in following words :

13. The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed. The crucial words in [Section 4](#) of the 1963 Act are prescribed period. What is the meaning of these words? [Section 2\(j\)](#) of the 1963 Act defines period of limitation which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and prescribed period means the period of limitation computed in accordance with the provisions of this Act. [Section 2\(j\)](#) of the 1963 Act when read in the context of [Section 34\(3\)](#) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of [Section 34](#) of the 1996 Act is not the period of limitation and, therefore, not prescribed period for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of [Section 34](#) of the 1996 Act being not the period of limitation or, in other words, prescribed period, in our opinion, [Section 4](#) of the 1963 Act is not, at all, attracted to the facts of the present case.

14. Seen thus, the applications made by the appellants on January 2, 2004, for setting aside the arbitral award dated August 26, 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time barred.”

12. It is no doubt true that by virtue of Section 43 of the Arbitration and Conciliation Act, 1996, the Limitation Act, 1963 apply to arbitrations, as it apply to proceedings in Court, but by virtue of Section 29 (2) of the Limitation Act, if any other period has been prescribed under the special enactment, then that period of limitation will govern the proceedings under that enactment and not the provisions of the Limitation Act.

In the present case, under the Act of 1996, the period of limitation for setting aside the award on any of the ground mentioned in Section 34(2), has been prescribed and that will govern the challenge to the Arbitral Award. Likewise, additional period of delay viz. 30 days, as per proviso to Section 34 (2) will govern the proceedings under Section 34. By virtue of Section 29(2) of the Limitation Act, what is excluded in respect of an application for setting aside an award under Section 34 of the Act of 1996, is the applicability of Sections 5 and 3, read with

Schedule to the Limitation Act. As a consequence, the application for condonation of delay upto period of 30 days can only be made before the Court in respect of application under Section 34 and not beyond that.

The Arbitration and Conciliation Act 1996 is a special statute intended to expedite the commercial issues and perusal of it's statement of objection and reason, it is manifest that, in order to recognize economic reforms, the settlement of both the domestic and international disputes should be disposed of quickly, so that country's economic progress is expedited. Keeping in mind the aforesaid spirit, if the special provision prescribing a limitation, under the proviso to Section 34(3), do not permit any discretion to be exercised beyond period of 30 days. In case of **Union of India Vs. Popular Constructions (2001) 8 SCC 470**, the Hon'ble Apex Court observed as under :-

“..... Furthermore, [section 34\(1\)](#) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub Section 2 and sub Section 3. But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34 (1), recourse to the court against an arbitral award cannot be made beyond

the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that the award becomes enforceable as soon as the limitation period under Section 34 expires. This is a significant departure from the provisions of the Arbitration Act, 1940. Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.”

13. Recently, while construing the extension period of limitation during Covid-19 pandemic, when the Hon'ble Apex Court took cognizance for extension of limitation in re, **(2020) 19 SCC 10**, and in construing whether the said judgment extended only period of limitation or even extended the discretion conferred by the Statute concerned, in the wake of the pandemic, so as to extend the benefits to the vigilant citizens, who were confronted with difficulties on account of the pandemic and lock-down, once again their Lordships of the Hon'ble Apex Court deliberated on the said issue. Holding that the original law of limitation can be traced to maxim '*vigilantibus et non dormientibus jura subveniunt*'; which means law assist only those, who are vigilant

about their rights and not those, who sleep over them. The expression “prescribed period” came to be interpreted by the Hon’ble Apex Court in case of **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others, (2021) 2 SCC 317**, by making reference under Section 4 and Section 10 in the following words :

“20. The words “prescribed period” appear in several Sections of the Limitation Act, 1963. Though these words “prescribed period” are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

20.1. Section 3(1) makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Sections 4 to 24.

20.2. Section 5 enables the admission of any appeal or application after the prescribed period.

20.3. Section 6 uses the expression prescribed period in relation to proceedings to be initiated by persons under legal disability.

21. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.”

By referring to it's earlier decision in the case of **Assam Urban Water Supply and Sewerage Board vs. Subash Projects and Mktg. Ltd., (2012) 2 SCC 624**, it is clarified by Their Lordships in **Sagufa Ahmed (supra)**, that the period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act, is not the "period of limitation" and therefore, not "prescribed period" for the purposes of making an application for setting aside the arbitral award. Therefore, the appellants cannot claim benefits of the order passed by the Apex Court on 23.03.2020 for enlarging even the period upto which the delay can be condoned.

In the wake of the aforesaid authoritative pronouncements, since the "period of limitation" is the initial period prescribed under sub-section (3) of Section 34 being three months, if the extended period of 30 days fall within the summer vacation, the benefit of Section 4 of the Limitation Act, 1963, which did not extend the period of limitation, but provide for a contingency when the prescribed period expires on holiday and when the Court is closed, cannot be granted. In the wake of the above, the impugned orders passed by the learned District Judge rejecting

the applications filed by the NHAI seeking condonation of delay by taking recourse to Section 4 of the Limitation Act, are rightly passed. The said orders being passed on the settled position of law, do not warrant any interference and they are upheld. Necessarily, the appeals are dismissed.

(SMT. BHARATI DANGRE, J.)

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