

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) ARBITRATION APPEAL NO. 119 OF 2020
WITH CIVIL APPLICATION NO. 1055 OF 2020
WITH CIVIL APPLICATION NO. 8496 OF 2020

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Mukesh Madhukar Mahale and Others ...Respondents
/Original Claimants

...
WITH

(2) ARBITRATION APPEAL NO. 2 OF 2020
WITH CIVIL APPLICATION NO. 443 OF 2020
WITH CIVIL APPLICATION NO. 8451 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Arun Vitthal Naik ...Original Claimant
/Respondent

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WITH

(3) ARBITRATION APPEAL NO. 3 OF 2020
WITH CIVIL APPLICATION NO. 444 OF 2020
WITH CIVIL APPLICATION NO. 8436 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha ...Appellant/
Original Respondent

Versus

Ravindra Wamanrao Patil ...Original Claimant
/Respondent

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WITH
(4) ARBITRATION APPEAL NO. 7 OF 2020
WITH CIVIL APPLICATION NO. 449 OF 2020
WITH CIVIL APPLICATION NO. 8437 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Ravindra Ramchandra Chaudhari ...Original Claimant
/Respondent

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WITH
(5) ARBITRATION APPEAL NO. 8 OF 2020
WITH CIVIL APPLICATION NO. 450 OF 2020
WITH CIVIL APPLICATION NO. 8438 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Vijay Sudam Patil ...Original Claimant
/Respondent

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WITH
(6) ARBITRATION APPEAL NO. 9 OF 2020
WITH CIVIL APPLICATION NO. 451 OF 2020
WITH CIVIL APPLICATION NO. 8439 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Rajendra Ambadas Rane ...Original Claimant
/Respondent

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WITH
(7) ARBITRATION APPEAL NO. 10 OF 2020
WITH CIVIL APPLICATION NO. 452 OF 2020
WITH CIVIL APPLICATION NO. 8455 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha ...Appellant/
Original Respondent

Versus

Nilesh Murlidhar Karande ...Original Claimant
/Respondent

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WITH
(8) ARBITRATION APPEAL NO. 11 OF 2020
WITH CIVIL APPLICATION NO. 453 OF 2020
WITH CIVIL APPLICATION NO. 8452 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha ...Appellant/
Original Respondent

Versus

Vasant Baliram Talele and Anr. ...Original Claimants
/Respondents

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WITH
(9) ARBITRATION APPEAL NO. 12 OF 2020
WITH CIVIL APPLICATION NO. 454 OF 2020
WITH CIVIL APPLICATION NO. 8448 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Ninu Ramkrishna Badhe ...Original Claimant
/Respondent

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WITH
(10) ARBITRATION APPEAL NO. 13 OF 2020
WITH CIVIL APPLICATION NO. 455 OF 2020
WITH CIVIL APPLICATION NO. 8425 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent
Versus

Pundalik Shankar Patil ...Original Claimant
/Respondent

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WITH
(11) ARBITRATION APPEAL NO. 14 OF 2020
WITH CIVIL APPLICATION NO. 456 OF 2020
WITH CIVIL APPLICATION NO. 8422 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent
Versus

Eknathrao Ganpatrao Khadase ...Original Claimant
/Respondent

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WITH
(12) ARBITRATION APPEAL NO. 30 OF 2020
WITH CIVIL APPLICATION NO. 694 OF 2020
WITH CIVIL APPLICATION NO. 8457 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent
Versus

Bhaskar Govind Zope and Ors. ...Original Claimants
/Respondents

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WITH

(13) ARBITRATION APPEAL NO. 39 OF 2020
WITH CIVIL APPLICATION NO. 732 OF 2020
WITH CIVIL APPLICATION NO. 8460 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha .Appellant/
Original Respondent

Versus

Prabhakar Sopan Zope ...Original Claimant
/Respondent

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WITH

(14) ARBITRATION APPEAL NO.40 OF 2020
WITH CIVIL APPLICATION NO. 734 OF 2020
WITH CIVIL APPLICATION NO. 8434 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha ...Appellant/
Original Respondent

Versus

Jyoti Chandrashekhar Badhe ...Original Claimant
/Respondent

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WITH

(15) ARBITRATION APPEAL NO. 41 OF 2020
WITH CIVIL APPLICATION NO. 735 OF 2020
WITH CIVIL APPLICATION NO. 8424 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. Sinha ...Appellant/
Original Respondent

Versus

Sandip Ramesh Khachane ...Original Claimant
/Respondent

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WITH
(16) ARBITRATION APPEAL NO.42 OF 2020
 WITH CIVIL APPLICATION NO. 736 OF 2020
 WITH CIVIL APPLICATION NO. 8450 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. Sinha .Appellant/
 Original Respondent

Versus

Nalini Vasudeo Badhe ...Original Claimant
 /Respondent

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 WITH
(17) ARBITRATION APPEAL NO.43 OF 2020
 WITH CIVIL APPLICATION NO. 737 OF 2020
 WITH CIVIL APPLICATION NO. 8432 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. Sinha ...Appellant/
 Original Respondent

Versus

Vasudeo Shankar Kolhe and Anr. ...Original Claimants
 /Respondents

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 WITH
(18) ARBITRATION APPEAL NO. 46 OF 2020
 WITH CIVIL APPLICATION NO. 741 OF 2020
 WITH CIVIL APPLICATION NO. 8441 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. SinhaAppellant/
 Original Respondent

Versus

Vijay Gagdish Patil ...Original Claimant
 /Respondent

WITH
(19) ARBITRATION APPEAL NO. 47 OF 2020
WITH CIVIL APPLICATION NO. 742 OF 2020
WITH CIVIL APPLICATION NO. 8497 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Kundabai Arun Mali ...Original Claimant
/Respondent

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WITH
(20) ARBITRATION APPEAL NO.51 OF 2020
WITH CIVIL APPLICATION NO. 758 OF 2020
WITH CIVIL APPLICATION NO. 8514 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Vasudev Rama Bhangale ...Original Claimant
/Respondent

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WITH
(21) ARBITRATION APPEAL NO. 52 OF 2020
WITH CIVIL APPLICATION NO. 761 OF 2020
WITH CIVIL APPLICATION NO. 8515 OF 2022

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Avinash Ramchandra Sarode ...Original Claimant
/Respondent

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WITH
(22) ARBITRATION APPEAL NO. 53 OF 2020
 WITH CIVIL APPLICATION NO. 763 OF 2020
 WITH CIVIL APPLICATION NO. 8516 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. SinhaAppellant/
 Original Respondent

Versus

Mandakini Eknathrao Khadase ...Original Claimant
 /Respondent

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 WITH
(23) ARBITRATION APPEAL NO. 63 OF 2020
 WITH CIVIL APPLICATION NO. 789 OF 2020
 WITH CIVIL APPLICATION NO. 8517 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. SinhaAppellant/
 Original Respondent

Versus

Shailesh Kalidas Patil and Anr. ...Original Claimant
 /Respondent

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 WITH
(24) ARBITRATION APPEAL NO. 75 OF 2020
 WITH CIVIL APPLICATION NO. 823 OF 2020
 WITH CIVIL APPLICATION NO. 8518 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. Sinha .Appellant/
 Original Respondent

Versus

Mangala Vasudev Badhe ...Original Claimant
 /Respondent

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 WITH

(25) ARBITRATION APPEAL NO.76 OF 2020
WITH CIVIL APPLICATION NO. 824 OF 2020

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
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Versus

Madhukar Mahadhu Khachane and Anr.	...Original Claimant /Respondent
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WITH

(26) ARBITRATION APPEAL NO. 79 OF 2020
WITH CIVIL APPLICATION NO. 842 OF 2020

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
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Versus

Gajanan Balkrishna Patil	...Original Claimant /Respondent
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WITH

(27) ARBITRATION APPEAL NO. 80 OF 2020
WITH CIVIL APPLICATION NO. 843 OF 2020
WITH CIVIL APPLICATION NO. 8493 OF 2022

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
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Versus

Hari Narayan Zope	...Original Claimant /Respondent
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WITH
(28) ARBITRATION APPEAL NO. 81 OF 2020
 WITH CIVIL APPLICATION NO. 844 OF 2020
 WITH CIVIL APPLICATION NO. 8498 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. Sinha .Appellant/
 Original Respondent
 Versus

Gopal Narayan Khachane ...Original Claimant
 /Respondent

...
 WITH
(29) ARBITRATION APPEAL NO. 83 OF 2020
 WITH CIVIL APPLICATION NO. 847 OF 2020
 WITH CIVIL APPLICATION NO. 8494 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. SinhaAppellant/
 Original Respondent
 Versus

Namdev Trambak Badhe and Anr. ...Original Claimants
 /Respondents

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 WITH
(30) ARBITRATION APPEAL NO. 84 OF 2020
 WITH CIVIL APPLICATION NO. 848 OF 2020
 WITH CIVIL APPLICATION NO. 8495 OF 2022

National Highways Authority of India,
 Project Implementation Unit, Jalgaon,
 Through its: Project Director Chandrakant M. Sinha .Appellant/
 Original Respondent
 Versus

Pradip Barsu Badhe and Anr. ...Original Claimants
 /Respondents

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WITH
(31) ARBITRATION APPEAL NO. 97 OF 2020
WITH CIVIL APPLICATION NO. 921 OF 2020

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
Versus	

Vasudeo Raghunath Patil	...Original Claimant /Respondent
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WITH
(32) ARBITRATION APPEAL NO. 103 OF 2020
WITH CIVIL APPLICATION NO. 928 OF 2020
WITH CIVIL APPLICATION NO. 8513 OF 2022

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
Versus	

Murlidhar Vishvanath Patil and Ors.	...Original Claimants /Respondents
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...
(33) ARBITRATION APPEAL NO. 104 OF 2020
WITH CIVIL APPLICATION NO. 929 OF 2020
WITH CIVIL APPLICATION NO. 9649 OF 2022

National Highways Authority of India, Project Implementation Unit, Jalgaon, Through its: Project Director Chandrakant M. Sinha	Appellant/ Original Respondent
Versus	

Vasudeo Raghunath Patil and Ors.	...Original Claimants /Respondents
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WITH
(34) ARBITRATION APPEAL NO. 112 OF 2020
WITH CIVIL APPLICATION NO. 1047 OF 2020

National Highways Authority of India,
Project Implementation Unit, Jalgaon,
Through its: Project Director Chandrakant M. SinhaAppellant/
Original Respondent

Versus

Vasant Sopan Patil and Ors. ...Original Claimants
/Respondents

...
Mr. Deepak S. Manorkar, Advocate instructed by Mr. M.V. Kini and
Company for Petitioner, in all matters;
Mr. Vinod Patil, Advocate for Respondent Nos.1 to 3, in all matters
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CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 09.12.2022

PRONOUNCED ON : 19.12.2022

JUDGMENT :

1. These appeals are filed under section 37 of the Arbitration and Conciliation Act, 1996 (in short "Arbitration Act") challenging orders dated 28.08.2019 passed by the Principal District Judge, Jalgaon rejecting applications for condonation of delay in filing petitions under section 34 of the Arbitration Act challenging arbitration award dated 15.01.2019.

2. The appeals involve the issue of interpretation under sub Section (3) of Section 34 of the Arbitration Act. It would be necessary to narrate the events leading to filing of petitions under Section 34 of the Arbitration Act. The award was made by the learned sole arbitrator on 15.01.2019. The same was received by the appellant on 17.01.2019. The maximum period of three months, within which the petition under Section 34 of the Arbitration Act would be filed ended on 17.04.2019. Further

grace period of 30 days provided under proviso to sub Section 3 of Section 34 of the Arbitration Act, within which delay could be condoned, ended on 17.05.2019. The petition under Section 34 of the Arbitration Act challenging the award came to be filed by the appellants on 03.06.2019.

3. The above position would show that the petitions under Section 34 of the Arbitration Act challenging the arbitral award were filed beyond both the periods of three months and 30 days as provided under sub Section 3 of Section 34 of the Arbitration Act. On 17.04.2019, which was the last date up to which delay in filing the petitions could be condoned, the District Court was on vacation, and therefore, the petitions were filed on 03.06.2019 when the Court resumed after vacation.

4. The District Judge has however, held that the petitions could be filed even during vacation. The District Judge has relied upon the Judgment of the Supreme Court in case of **Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Ltd. (2012) 2 SCC 624** and proceeded to reject the application for condonation of delay on the ground that it has no power to condone the delay during the maximum period prescribed under proviso to sub Section 3 of Section 34 of the Act.

5. At the outset it must be observed that the issue involved in the present case is squarely covered by the order dated 19.01.2022 passed in **National Highways Authority of India Vs. Avinash Purushottam Supe (Arbitration Appeal No.105/2020)**, wherein this Court has considered the entire case law and subject and has held as under :-

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.

6. Appearing for the appellants, Mr Manorkar learned counsel would broadly agree that the issue in the present appeals is covered by the decision in ***National Highways Authority of India Vs. Avinash Purushottam Supe*** (supra). He would however seek to advance few additional submissions which were not advanced in that decision.

7. Mr Manorkar would rely upon Section 10 of the General Clauses Act, which provides as under :-

Section 10: Computation of time.

10. (1) Where, by any 1[Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 applies.

(2) This section applies also to all 2[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

8. Mr Manorkar would further rely upon the Judgment of the Apex Court in ***Harinder Singh Vs. S. Kamail Singh 1956 BJLS (SC) 109***. I have gone through the judgment of the Apex Court. The case arose out of election petition. In para No. 5 of the Judgment, it is held as under :-

(5) This argument proceeds on an interpretation of s. 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119 (a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are 'within fourteen days' or 'not later than fourteen days'. That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to s.81 of the Act. Section 81 (1) enacts that the election petition may be presented 'within such time as may be prescribed, and it is under this section that Rule 119 has been framed. It is obvious that the rule making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words 'not later than fourteen days' must be held to mean the same thing as 'within a period of fourteen days'. Reference in this connection should be made to the heading of Rule 119 which is, 'Time within which an election petition shall be presented'. We entertain no doubt that the legislature has used both the expressions. As meaning the same thing, and there are accordingly no grounds for holding that s.10 is not applicable to petitions falling within Rule 119.

9. Thus, even in case of ***Harinder Singh*** (supra), the Apex Court has held that for Section 10 of the General Clauses Act 1897 to apply,

there should be a period prescribed, and that period should expire on a holiday. However in **Assam Urban Water Supply** (supra), the Apex Court has held that the period mentioned in proviso to sub section 3 of Section 34 is not the "prescribed period". It will be apposite to reproduce para Nos.

11 to 14 in **Assam Urban Water Supply** as under :

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts ?

12. Section 4 of the 1963 Act reads as under:

"4. Expiry of prescribed period when court is closed.- Where the prescribed period for any 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."

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words ?

14. Section 2(j) of the 1963 Act defines:

"2.(j) '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 an arbitral award is three months. 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 the "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, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

Since in ***Assam urban Water Supply*** (supra), the Apex Court has held that the period mentioned in proviso to sub section 3 of Section 34 is not the "prescribed period", the Judgment in ***Harinder Singh*** (supra) cannot come to the assistance of the appellants.

10. Thus, the position is now well settled that even if the period of 30 days mentioned in Proviso to sub section 3 of section 34 of the Arbitration Act falls during vacation period, that period of 30 days cannot be extended on account of vacation of the Court. Even otherwise, as held by the District Court, it was always open to the appellants to file petitions challenging the arbitral award during vacation.

11. Consequently, I do not find any error being committed by the District Court in rejecting the application for condonation of delay. There is no merit in appeals and the same are dismissed without any orders as to costs.

12. The respondents shall be entitled to withdraw their respective amount of compensation deposited in this Court along with accrued interest. The civil applications for withdrawal of amount are accordingly disposed of. The civil applications for stay are also disposed of.

[**SANDEEP V. MARNE, J.**]

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