

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION [CAM] NO. 24/2022
IN ARBITRATION APPEAL ST.NO.11352/2022.

Union of India

-VERSUS-

H.N. Singh Construction.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.S. Sundram, Advocate for the Applicant.
Shri R.Chhabra, Advocate for Non-applicant no.1.

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CORAM: VINAY JOSHI, J.

DATE : SEPTEMBER 30, 2022.

Heard.

2. This is an application under Section 5 of the Limitation Act, seeking condonation of delay of 32 days caused in filing an appeal against the judgment and order dated 29.01.2022, passed in Civil Misc. Application No.347/2007, by the learned District Judge, Nagpur.

3. The applicant – Union of India has challenged an arbitral award passed by the learned District Judge, Nagpur

2

in terms of Section 34 of the Arbitration and Conciliation Act, 1996. The said application came to be rejected on 29.01.2022. Being aggrieved by the said decision, the applicant had filed the accompanying appeal, however, as there was delay of 32 days, a separate application seeking condonation of delay has been filed.

4. It is stated that the impugned judgment is dated 29.01.2022, whilst the applicant applied for certified copy on 25.03.2022, which was received on 07.04.2022, and then the appeal has been filed on 13.07.2022 along with the present application.

5. Admittedly, there happens to be delay of 32 days. The applicant contended that for Central Government, several procedural aspects are required to be complied before filing the appeal. In paragraph no.3 of the application, it has been stated that after passing of the impugned order, the concerned department has referred the matter to Law and Judiciary Department to seek opinion, which has consumed some time. After receipt of the opinion, it was communicated to the learned Counsel and on completion of other formalities, appeal has been filed and thus, the delay is

3

unintentional.

6. The learned Counsel for the respondent no.1 resisted this application by contending that though the applicant is Central Government, no different yardstick can be applied, while considering the application for condonation of delay. He would submit that there is no special privilege to the government in the matter of condonation of delay, for which he relied on the decision of Supreme Court in case of **Maniben Devraj Shah .vrs. Municipal Corporation of Brihan – [2012] 5 SCC 157.**

7. The learned Counsel for the respondent has submitted that in case of condonation of delay, it should not be allowed to use as a tool to cause delay in dispensation of justice. The law of limitation binds every one, including the government. In this regard, he relied on the decision of Supreme Court in case of **Postmaster General and others .vrs. Living Media Limited and another – (2012) 3 SCC 563.** In above referred cases undoubtedly it has been ruled that no separate treatment shall be given to the government, however, considering the then facts that there was delay of 427 days and 7 years respectively, , the delay was not

condoned.

8. Basically it is a question of fact to decide whether the applicant is able to explain the delay so as to satisfy the judicial mind about the cause so canvassed. Way back the Supreme Court in case of **Collector (LA) .vrs. Katiji – [1987] 2 SCC 107**, has considered the term “sufficient cause”, in the light of Section 5 of the Limitation Act. It has laid down the principles to be adopted while considering such application and held that unless malafides are shown, liberal approach is to be adopted.

9. The applicant has stated the reasons in the application regarding the procedure adopted by them, which has caused delay. As a matter of fact, it is not a case that there is delay of months together so as to construe it as intentional and actuated with malafides. The delay caused is of 32 days only. Considering the cause for delay I do not find any reason to suspect the cause canvassed by the applicant. The cause has to be decided on merits, rather than to throw on technicalities. Having regard to above facts, Civil Application is allowed. Delay is condoned. Appeal be registered and listed for admission.

5

10. Interim order shall continue for one week from uploading of this order.

JUDGE