

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CM No.125-FCARB of 2019 in/and
FAO-CARB No.45 of 2019 (O&M)

Date of Decision: September 20th, 2022

State of Haryana through Executive Engineer, Public Health Engineering
Division No.2, Yamuna Nagar and others

...Applicant/Appellants

Versus

M/s Bansal Constructions Company, Gurugram and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. P.S. Chauhan, Senior Additional Advocate General, Haryana,
for the applicant-appellants.

Mr. Naresh Markanda, Senior Advocate
with Mr. Rohan Markanda, Advocate
for the respondents

AUGUSTINE GEORGE MASIH, J.

CM No.125-FCARB of 2019

Prayer in this application is for condonation of alleged delay of 66
days in filing the present appeal.

Counsel for the applicant-appellant, with reference to the
pleadings in the application, has contended that the delay in filing the appeal
was neither intentional nor deliberate but because of the long and lengthy
procedure, where the file has to be dealt with at various levels for coming to a
decision as to whether an appeal has to be preferred against an order or not,
apart from the aspect of getting sanction for filing the said appeal once a
decision for challenging the order passed by a Court has been taken. Counsel
contends that no benefit would be gained out of the delay in filing the present
appeal by the applicant-appellant. The delay being neither deliberate nor

intentional, the same deserves to be condoned, where negligence is not made out. Prays has thus been made for condoning the delay in filing the appeal.

On the other hand, learned senior counsel for the respondent has opposed the prayer made in this application for condonation of delay of 66 days as claimed. His submission is that there is a delay of 90 days in filing the appeal. As per the requirement of the statute, it is asserted that not only should there be an explanation with regard to the period utilized for filing the appeal beyond the period of limitation but sufficient cause has to be made out for claiming such a benefit. That also would not be enough as the sufficient cause has to be made out in the facts of a given case and there cannot be said to be a right in the appellant to have the delay condoned on this aspect alone. Counsel for the respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) represented by the Executive Engineer Versus Borse Brothers Engineers and Contractor Private Limited 2021 (6) SCC 460***. Reliance has also been placed upon the judgment passed by this Court in ***FAO-CARB-19-2021*** titled as ***M/s Jai Parkash Associates Limited Versus Haryana Power Generation Corporation Limited***, where an application for condonation of delay of 22 days in filing the appeal had not been accepted and the application dismissed being beyond the period of limitation prescribed and with there being no justifiable and sufficient explanation for the delay. Prayer has thus been made for dismissal of the present application on the grounds of delay and laches and consequently the appeal.

Having considered the submissions made by the counsel for the

parties what is, therefore, culled out from the principles as have been laid down in the judgments which have been relied upon by the counsel for the respondent, especially *M/s Borse Brothers Engineers and Contractors Private Limited's case (supra)* is that not only the period has to be explained with sufficient cause having been projected therein, the same has to be based upon facts. The object of the Arbitration and Conciliation Act, 1996, is for speedy resolution of the disputes. A quietus has, therefore, to be brought about at the earliest and, therefore, the same has to be kept in mind when the delay in filing the appeal has to be considered including the sufficiency of the cause as also the explanation given for the actual delay having occurred. The aspect with regard to there being effort on the part of the party without any loss of time which can be said to be prompt and movement of the files even if in the Government offices leading to such a delay could be justifiable ground but where from the facts it is apparent that the applicant-appellant is negligent and laxity has taken over the intent ignoring the purpose as also the urgency being the casualty, such explanation cannot be accepted. Default or inaction of the party after having exceeded the period prescribed under the statute to avail of a remedy would impede the rights and option of filing an appeal. Merely because it is a Government Department would not in itself be a sufficient cause for condoning the delay in filing the appeal, where the things move mechanically and, therefore, a different yardstick for condonation of delay need to be used would be foul to the principle of the basic canons of law and justice. Delay defeats a right on the one hand of a party which has been irresponsible and lethargic apart from being negligent while on the other hand, it confers a right upon the other party crystallizing their right which

has been conferred upon them by virtue of an order passed by the competent Court. The intent of the legislation is not to give a free hand to a party to approach the Court without any period being fixed at its whims and fancies but to exercise a particular right within some specified time so that the right which has accrued in favour of the opposite party can be empowered and the fruits thereof enjoyed by the said party.

With these principles in mind, the pleadings in this application for condonation of delay, when seen, lack in the essentials as there has been neither any urgency or sincerity reflected on the part of the applicant-appellant, rather the delay has also not been explained. What has been pointed out is the applying of the certified copy of the order, the date of its preparation followed by the date of delivery and thereafter the letter of sanction and the filing of the appeal. There is no explanation for the period in between whatsoever where three months were utilized in this process leading to the inordinate and unexplained delay in filing the appeal. The delay having not been explained even sketchily, what to say of day to day explanation of the delay as required under the statute, even the term sufficient cause has not been even touched in the process as it is not even near to it that the explanation can be said to be provided for.

The provisions under the Arbitration and Conciliation Act reflect the very intent and purpose is to finalize the proceedings at the earliest and it is for this purpose that periods have been specified. Respect for the said time frame is essential as financial matters cannot wait and any loss of time could lead to disastrous conclusions financially for an organization/institutions/companies. No special status is conferred under the statute upon the Government or its departments nor can the Government and

its departments be treated with privilege of spending the time at its luxury. The same yardstick has to be applied for condoning the delay in filing the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 which is applicable to a private party.

In the light of the above, we do not find any justification much less justifiable explanation for the delay in filing the appeal in the absence of any explanation much less the sufficient cause. The present application, therefore, stands dismissed. The effect thereof is that the appeal i.e. FAO-CARB No.45 of 2019 stands dismissed as barred by delay and laches.

In the light of the dismissal of the appeal, application for stay i.e. CM No.158-FCARB of 2019 also stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 20th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No