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

**CM-151-FCARB-2019
CM-152-FCARB-2019 &
FAO-CARB-53-2019**

Date of decision: 18.08.2022

STATE OF HARYANA

.....APPELLANT

Versus

M/S BANSAL CONSTRUCTION COMPANY AND ANOTHER

.....RESPONDENTS

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

Present: Ms. Tanisha Peshawaria, DAG, Haryana,
for the applicant-appellant.

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

AUGUSTINE GEORGE MASIH, J.

CM-151-FCARB-2019

Prayer in this application is for condonation of delay of 218 days in filing the appeal against the order dated 01.11.2018 passed by the Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram, whereby an Objection Petition preferred under Section 34 of the Arbitration & Conciliation Act, 1996 by the appellant-State of Haryana against the arbitral award dated 07.10.2016, has been dismissed.

Learned counsel for the applicant-appellant has made valiant

efforts to justify and explain the delay in filing the appeal on the basis of the pleadings in the application with further reference to the replication to the reply filed by the respondents-Company to the application for condonation of delay.

What has been highlighted by the counsel for the applicant-appellant is that after receipt of the copy of the order dated 01.11.2018 by the Government pleader, comments were sent to the District Attorney, Gurugram, who opined that the appeal should be preferred in the Commercial Appellate Division in the High Court vide order dated 12.02.2019. The appellant approached the Legal Remembrancer, Haryana, who also advised for filing of the appeal vide memo dated 28.02.2019.

Public Health Engineering Division No. 2, Sonapat forwarded the case to the Public Health Engineering D&P Division, Sonapat on 28.03.2019, which was sent to the Additional Chief Secretary to the Govt. of Haryana, who issued instructions to the Advocate General, Haryana for filing of the appeal on 20.06.2019. Draft of the appeal was sent to the office of the Advocate General, Haryana on 15.07.2019 for vetting, which was finally vetted on 29.07.2019 and thereafter, the appeal was filed resulting in delay of 218 days in filing the appeal.

The gaps in-between have been sought to be explained by the counsel for the applicant-appellant by asserting that the files have been moving at different levels whereas sanction is to be granted by the competent authority. The procedure being impersonal, at times delay occurred at each stage and, therefore, the procedural delays may be ignored as no benefit would accrue to the applicant-appellant by delaying the process of filing the appeal.

Counsel for the applicant-appellant contends that the decision to file an appeal had been made at the very first instance at the level of the District Attorney but the delay has occurred because of the movement of the files in the various departments, which are procedural in nature, which need to be overlooked and the delay condoned in filing the appeal. It was neither deliberate nor intentional and, therefore, by condoning the delay, the appeal deserves to be heard on merits.

On the other hand, learned senior counsel for the respondents contends that even if it is said to be procedural delay or the winding process of file movement in the levels hierarchy of the department, the said delay has to be explained, if not on day to day basis, but at least some semblance of responsibility and urgency in dealing with the matter need to be reflected in the movement of the files. The State Government cannot be absolved of its obligation to perform the duties with diligence and commitment. Negligence is writ large, as is apparent from the pleadings and, therefore, in the absence of any explanation, what to say of just and reasonable, apart from the sufficient cause, the present application deserves to be dismissed.

Having considered the submissions made by the learned counsel for the parties and on going through the pleadings, what is apparent, as has been noted above, is sheer lethargy and inaction on the part of the applicant-appellant in pursuing the matter. The delay in filing the appeal, which is substantial i.e. 218 days, is considerable. The movement of the file at every level indicates non-seriousness, inaction and lack of responsibility, which has to be termed as negligence and lethargy. The requirement of the Statute is prompt and immediate action at the level of the authorities at each stage, even if there is a procedural movement of the files. Without there

being sufficient cause, which is duly supported by the factual matrix, it cannot be said to be due diligence and proper care and caution taken at the end of the department.

The Hon'ble Supreme Court in the case of **Government of Maharashtra vs. Borse Brothers Engineers and Contractors Pvt. Ltd.**, (2021) 6 SCC 460, where the Hon'ble Supreme Court has categorically held that there cannot be a separate yardstick for the Government or its departments for condonation of delay to be calculated and considered. Although there may be discretion at the end of the Court to condone the delay but that discretion has to be exercised in a judicious manner. The period of limitation, as provided for in the Statute, needs to be respected and honoured and not to be ignored or overlooked merely because there is an impersonal and procedural inaction on the part of the Government and its departments. They have to be put on equal footing like any other party to a lis. Sufficient cause means in the context of condoning delay in filing the appeal.

The intention has also to be seen of the legislature where the Arbitration and Conciliation Act is concerned, the scheme of the Act has to be seen in the context that the proceedings come to an end within a time frame. The primary object is to reach a final disposal of disputes in a speedy, effective, inexpensive and exceptional manner which aim can never be achieved if the limitation, as prescribed under the Statute, is not adhered to. Directive principles of testing such delays, as in the present case, need to be exercised as in a commercial litigation, with the period of time, rights crystallize and a party, which has got an order in his favour, would be entitled to the fruits of the order/decreed passed by the Court where

especially, when the limitation period, as prescribed, has expired. It is in exceptional circumstances and that too, where there is a justifiable explanation for the delay in filing the appeal as there were circumstances beyond the control of a party that such power for condoning the delay can be exercised.

When seen from these parameters, we do not find the present case to be one which fulfils the mandate of the statute and the law, as has been settled by the various judgments of the Hon'ble Supreme Court and this Court.

In the light of the inordinate and unexplained delay in the filing of the appeal, the present application being an outcome of negligence and inaction on the part of the applicant-appellant, deserves dismissal.

Ordered accordingly.

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The appeal is dismissed being barred by huge delay and laches.

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In view of the dismissal of the main appeal, the present application for stay has been rendered infructuous and the same is disposed of as such.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

18.08.2022
PJ

**(ALOK JAIN)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>