



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 26.07.2022.

% Judgment delivered on: 29.07.2022.

+ FAO (COMM) 20/2022 and C.M. Nos. 5663/2022, 5664/2022, 5665/2022 & 5666/2022

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms. Kritika Gupta, Advocate

versus

M/S AJAB SINGH AND CO. Respondent

Through: Mr. Saket Sikri with Mr. Bhupesh Narula and Mr. Rinku Narula, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal is arising out of the order dated 12.10.2020 by which the Application for condonation of delay in filing the objection to the Additional Award dated 30.06.2018 as well as Award dated 12.05.2018, which were served to the Delhi Development Authority (DDA) on 03.07.2018, has been rejected and dismissal of Application for condonation of delay has resulted in dismissal of OMP (COMM) No. 12/2018 (New No. 8/ 2020).

2. The facts of the case reveal that the Appellant before this Court has floated a tender for the work of D/o Yamuna River Front Vijay Ghat (Pushta), subhead: C/o Parking at Golden Jubilee Park near old railway



bridge through its Executive Engineer on 28.10.2011 with an estimated cost of Rs. 80,65,617/-.

3. The respondent was declared as successful bidder and vide letter dated 26.12.2011, the work was awarded to the respondent for an amount of Rs. 1,24,18,320/-, and finally agreement was executed between the parties on 03.01.2012. The date of commencement of work was 05.01.2012, and the stipulated date of completion was 04.07.2012.

4. The Respondent requested for extension of work as the same was not completed within the time frame as per the terms and conditions of the agreement, and finally the respondent Claimant vide letter dated 17.01.2013, requested the Appellant to close the contract, and resultantly, the contract was closed as the work was not completed even after grant of extension of seven months.

5. A dispute arose between the parties when the bill was submitted by the Respondent Claimant, and the dispute was referred to Arbitration.

6. The DDA appointed Sh. Lakhvinder Chaudhary, SE (Arbn.)/ DDA as the Sole Arbitrator vide order dated 18.06.2013, and later on, on account of transfer of Sh. Lakhvinder Chaudhary, one Sh. S. K. Jain, SE (Arbn.)/ DDA was appointed as an Arbitrator vide order dated 17.02.2014.

7. Thereafter, again, on account of, transfer of Sh. S. K. Jain one Sh. D. V. Raghav, SE(Arbn.) was appointed as Arbitrator on 05.03.2015, and finally one Sh. S. P. Banwait (Retd) Addl. Director General, CPWD was appointed as Arbitrator vide order dated 03.01.2017.



8. The Claimant submitted statement of claim before the Arbitrator and counter statement was submitted by the Appellant Department, and finally an award was passed on 12.05.2018, and an additional award was passed on 30.06.2018 awarding an amount of Rs. 1,31,12,790/-.

9. The Appellant before this Court submitted Application under Section 34 of Arbitration and Conciliation Act, 1996 before the Court for setting aside the arbitral Award dated 12.05.2018 and modified Award dated 30.06.2018

10. An Application was preferred under Section 5 of the Limitation Act, for condonation of delay of 23 days, and the Learned Presiding Officer (Commercial Court- 05) has dismissed the Application for condonation of delay. The order passed by the Court below in Paragraph 5 to 18 reads as follows:

“5) *Petitioner alongwith the petition has filed an application under Section 5 of the Limitation Act for condonation of delay of 21 days and reasons of delay are mentioned from para no. 4 to 7 of the application. It is mentioned in this application that appeal could not be filed within statutory period due to the reasons that case file was earlier assigned to a counsel for the Karkardooma Court inadvertently on 24-9-2018 who returned the same on 28-9-2018 on account of lack of jurisdiction. Thereafter, after approval and permission of the concerned authorities, file was assigned to present counsel and handed over to him on 6-10- 2018. As per petitioner, due to mistake of fact and unintentional delay in communication between the counsel and the official, delay has happened and the appeal could not be filed*



within the prescribed time. Hence, this appeal is now filed along with the application for condonation of delay.

- 6) *Three months period is available to the party to challenge the award under Section 34 (3) of the Arbitration and Conciliation Act but if court is satisfied that the objector was prevented by sufficient cause from making objection petition, then the same can be entertained within further period of 30 days but not thereafter.*
- 7) *If the decision of the Supreme Court in cases **UOI vs. Popular Constructions (2001) 8 SCC 470** and **State of H.P. vs. Himachal Techno Engineers (2010) 12 SCC 210** are taken into consideration, then it is clear that Section 5 of the Limitation Act is not applicable to the objections filed under section 34 of the Arbitration and Conciliation Act and court can condone delay of maximum 30 days on showing sufficient cause beyond three months period allowed to the party and thereafter even court has no power to condone further delay even if sufficient cause is shown. The complete code qua limitation in respect of objections is incorporated in Section 34 (3) of the Act. Hence, the present application filed by the petitioner seeking condonation of delay under Section 5 of the Limitation Act itself is not maintainable and can be dismissed straightway. However, this application can be treated as an application u/s 34 (3) of the Arbitration & Conciliation Act to ascertain whether it is containing any sufficient cause or not in order to condone the delay.*
- 8) *One question has arisen whether the limitation point has to be counted from the original award dated 12-5-2018 or from the date of additional award dated 30-6-2018. As*



*per counsel for the respondent, the objections were required to be filed within prescribed time from the date of first award and second additional award is only based upon the application u/s 33 of the Act for correction of certain typing mistakes and calculation errors whereas stand of the counsel for petitioner is that original award has merged into additional award, so limitation has to be calculated from the date of receipt of copy of additional award and since petitioner has shown sufficient cause in the application under Section 5 of the Limitation Act so the delay can be condoned and petition can be entertained. If the decision of **Supreme Court in M/s. Ved Prakash Mithal vs. UOI, 2018 SCC OnLine SC 3181** is taken into consideration, then it is clear that period of limitation would run from the date of additional award as original award is merged into the same. Hence, the arguments of the counsel for the respondent that time limit should be counted from the date of first award and not from the date of additional award is liable to be rejected. The limitation thus has to be counted from 3-7-2018 when copy of the additional award was received by the petitioner.*

- 9) *The present objection petition was filed in court on 26-10-2018. As the limitation period has to be counted from the date of receipt of copy of the additional award dated 30-6-2018 by the petitioner on 3-7-2018, so it is clear that petitioner has already exhausted its 3 months period to file objections against original as well as additional award and further 23 days had gone in excess. Now it has to show sufficient cause of delay in order to take benefit of further extension of 30 days beyond first 3 months period which is at the discretion of the court. However, if the discretion is exercised by the court in*



providing concession of 30 days beyond 3 months already expired, then this objection petition can be entertained otherwise it has to be compulsorily dismissed. Everything now depends upon the fact whether petitioner is able to show the sufficient cause of delay or not.

- 10) *After going through the contents of application under Section 5 of the Limitation Act especially para no. 4 to 7 which is now treated as an application under Section 34 (3) of Arbitration & Conciliation Act, I am of the view that petitioner has failed to show any sufficient cause for seeking condonation of delay and to pursue this court to exercise discretion for extension of another 30 days beyond first three months period. This fact is not in dispute that petitioner has full fledged legal department in its office. Why the petitioner took more than 2½ months to assign the case to an advocate that is also of Karkardooma Court could not be justified and no reasons are given in the application. The case was assigned to advocate of Karkardooma Court only on 24-9-2018 who returned the file on 28-9-2018 due to lack of jurisdiction of that court. Petitioner even failed to tell the name of that counsel of Karkardooma Court in the application. What steps had taken place in between 3-7-2018 to 24-9-2018 and from which table to which table file shifted and on which dates is not disclosed at all. When the file came back from Karkardooma Counsel on 28-9-2018 and assigned to present counsel on 6-10-2018, then still due to which reasons, time of about 20 days was taken to file this petition is not explainable. The application seeking condonation of delay is lacking details and particulars why so much time was spent in the office of the petitioner. Who was the concerned*



*official due to whose fault, delay happened also not disclosed. Mere saying that due to mistake of fact and unintentional delay in communication between counsel and officials is not sufficient. A full fledged legal branch of the petitioner was unable to decide which court would have jurisdiction to entertain the objections and assigned the matter to counsel of Karkardooma Court wrongly does not make out a sufficient cause as it cannot be treated as an inadvertent mistake. In such situation, it is not a fit case to give any relaxation of the further 30 days period to the petitioner beyond first 3 months. Infact the condonation of delay application is highly vague, unspecific and without detail particulars. Even no notings of movement of the file from one place to another was annexed with the application. **Supreme Court in State of Rajasthan vs. Nav Bharat Construction Company (2015) 11 SCC 197** even did not condone the limitation in favour of govt. agencies due to vague submissions without particulars.*

- 11) *Counsel for the petitioner in his written submissions from para no. 9 to 13 tried to fill up the lacuna left in the application under Section 5 of the Limitation Act and tried to justify the delay by showing certain more facts regarding the movement of the file from one table to another. However, the facts now alleged in the written submission cannot be considered which were not mentioned at all in the application. Even otherwise also, the notings of the internal file regarding movement is also still not disclosed to ascertain, due to exactly what reasons and due to whose fault, delay had happened.*
- 12) *In the written submissions, petitioner mentioned various judgments and pleaded that it is better to decide the case*



on merits and liberal approach should be adopted in case of govt. agency as normally delay happens in such big establishments. The judgments relied upon by the petitioner for condonation of delay are in those cases where applications under section 5 of the Limitation Act were moved whereas in the proceedings under Section 34 of Arbitration and Conciliation Act, the provision of Section 5 of Limitation Act are not applicable at all as per case laws cited above.

- 13) *Delhi High Court in **UOI vs. Wishwa Mittar Bajaj (2007) 141 DLT 179** did not approve the casual conduct of the officials of govt. department who sleep over the urgent matter. HC did not treat such conduct as sufficient cause to condone the delay where serious consequences and financial liability is involved. It is also observed that administrative delays are to be properly and adequately explained. Negligence or indifference on the part of the authority or its officers in pursuing the matter cannot be condoned simply because the applicant is a State or Govt. Undertaking. The law of limitation remains the same and certainly there cannot be two laws, one governing the State and other governing individuals. Cryptic and routine explanations for condonation of delay cannot be accepted as adequate explanation or sufficient cause for condonation of delay. In this matter, High Court discussed number of judgments and commented upon the manner of casual working of govt. officials and fixing their responsibilities.*
- 14) *Supreme Court in case **Postmaster General vs. Living India Media (2012) 3 SCC 563** has now depreciated giving of liberal approach towards govt. machinery which earlier used to be given and also held that*



condonation of delay is an exception and should not be used as an anticipated benefit for govt. departments and offering usual explanation that file was kept pending due to procedural red tape.

- 15) *Thus, the words 'sufficient cause' appearing in Section 34 (3) of Arbitration and Conciliation Act cannot receive a liberal construction in every case in favour of govt. agencies on the pretext to advance substantial justice even when the delay has happened due to deliberate inaction or negligence on the part of the such agencies. Due to expiry of limitation period, a right has accrued in favour of the respondent which cannot be upset so easily. The plea taken by the counsel for petitioner that matter should be heard on merits and not to be disposed off on technical grounds is liable to be discarded in present facts and circumstances of case.*
- 16) *It is argued by counsel for the petitioner that no notice of the application u/s 33 of Act was served upon it and arbitrator without hearing the petitioner passed additional award on 30-6-2018 which is exparte and it creates a sufficient cause to condone the delay. However, this fact is wrong as in para no. 3 of the written submissions, receiving of the advance copy is admitted by petitioner. Further arbitrator on page no. 2 of the additional award has clearly stated that notice of the application was served upon the petitioner. Observation of the arbitrator on page no. 23 also shows that petitioner gave a letter dated 20-6-2018 to him seeking 10 days time to give comments but when despite taking this time, nothing was said then the arbitrator disposed off application u/s 33 of the Act by presuming that petitioner has nothing to say and accordingly passed the*



additional award. These observations and findings of arbitrator totally rule out that the additional award is exparte and it is decided without notice to the petitioner. Nowhere petitioner mentioned that these facts written by arbitrator in additional award are wrong. These above facts further reveals the act and conduct of the petitioner, how casually its officers were working and despite taking demanded time failed to give any comment upon the application of the petitioner under Section 33 of the Act. It creates an additional ground to hold that there was no sufficient cause available with the petitioner and accordingly it is not entitled to any discretion of the court to entertain petition within further 30 days time after the expiry of initial 3 months period.

- 17) *Counsel for the respondent in its written arguments raised certain more points relating to jurisdiction of the court, competency of the officer filing the objection petition, non filing of statement of truth etc. but on these points, no arguments were heard being not raised earlier so it cannot be considered now. Otherwise also, when it is held above that objection petition is time barred and there exist no sufficient cause to condone the delay so there is no necessity to consider more points as raised by the counsel for respondent.*
- 18) *In view of the above, there remains no option except to dismiss the application for condonation of delay and consequently the objection petition is also dismissed. Record of the arbitrator along with copy of this order be sent back and file be consigned to record room.”*

11. Meaning thereby, the condonation of delay Application preferred in the matter in which the prayer was made for condoning the delay of 21 days



has been rejected by holding that sufficient cause has not been explained, meaning thereby, the Objection Petition has also been dismissed.

12. This Court has heard Learned Counsel for the Parties at length and perused the record.

13. The undisputed facts of the case makes it very clear that an award was passed by the Arbitrator on 12.05.2018 against the DDA for a sum of Rs. 85,54,514/-. The Respondent Claimant preferred an Application under Section 33 of the Arbitration and Conciliation Act, 1996 on 02.06.2018, and the modified Award was passed by the Learned Arbitrator on 30.06.2018 awarding a sum of Rs. 1,31,12,790.00/-.

14. The copy of the Award was served upon the DDA only on 03.07.2018. The relevant Statutory Provisions i.e. Section 33 and 34, governing the field as contained under the Arbitration and Conciliation Act, 1996 read as under:

“33. Correction and interpretation of award; additional award.— (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the



correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

34. Application for setting aside arbitral award.—*(1) 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).*

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or



(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. 2

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or



(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.



[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]”

15. In light of the aforesaid statutory provisions of law, it is crystal clear that an Application for setting aside Arbitral Award has to be preferred within 90 days, and if sufficient cause is shown in respect of delay after expiry of 90 days in approaching the Court, the delay only upto a period of 30 days can be condoned. In the present case, the delay is of 21 days.

16. The Court below in the present case has arrived at a conclusion that sufficient cause has not been shown by the DDA explaining the delay. The Application preferred under Section 5 read with Section 151 of the Code of Civil Procedure in Paragraphs 1 to 12 reads as under:

“1. That the applicant/ petitioner has filed the arbitration appeal before the Hon'ble Court accompanied by the present application praying for condonation of delay,

2. That the contents of the application/ petition under S.34 of the Arbitration and Conciliation Act, 1996 be kindly read as part and parcel of this present application, which, are not being reproduced herein for the sake of brevity.

3. That copy of the Additional Ex-parte award dated 30.06.2018 as passed by the Ld. Arbitrator received by the applicant/ petitioner on 03.07.2018.

4. That the applicant however could not file the accompanying appeal within the statutory period due to the reasons that the



case file was earlier assigned to a Counsel for the Ld. Karkardooma District Courts, inadvertently for filing the present appeal on 24.09.2018.

5. That the Ld. Counsel sent case file back on 28.09.2018 whilst informing the concerned officials about the lack of Jurisdiction with respect to the subject matter of the Arbitration.

6. That the case file was to be assigned to the present Panel Counsel after approval and the permission of the concerned authorities for instituting the present appeal/ petition. Post approval permission from the concerned official, the counsel was engaged and the file was handed over to the Present Counsel on 06.10.2018. Thereafter the present appeal/petition and application was drafted and was signed accordingly for filing before the respective Hon'ble Court.

7. That due to mistake of fact and unintentional delay in communication between the Counsel and the officials, the present appeal could not be preferred within the statutory period.

8. That due to the above stated reasons, the Counsel and the officials could not prefer the present appeal before the Hon'ble Court.

9. That it was thus realized by the officials of the department that the Suit had been decreed Ex-parte due to non-prosecution.

10. That not filing the present appeal-application on behalf of Plaintiff- Application was neither wilful nor intentional but was due to honest and innocent human error.

11. Having regard what has been stated herein above, it is submitted that the delay on part of the applicant-applicant was not willful or intentional and it is a fit case for setting aside the Arbitral Award and the Ex-parte additional award to meet the ends of justice.

12. That the applicant-applicant have a meritorious case in their favor and prima- facie, the balance of convenience lies in



their favor. The accompanying application should be allowed as the applicant petitioners would suffer irreparable loss and injury if the same is not heard on its merits. The application U/s 34 should be heard on its rightful merits by allowing the applicant/petitioner to contest the same through its Counsel and officials in the interest of Justice.”

17. Meaning thereby, all minute details were brought to the notice of the Court below for condonation of 23 days.

18. Even in the written arguments filed by the DDA, the names of Lawyers who were responsible in the matter of delay were disclosed and the Court below certainly has erred in law and facts in holding that sufficient cause has not been explained by the DDA.

19. In the present case, the delay of 23 days in filing of objection took place on account of wrong understating of the territorial jurisdiction, and the marking of the case to a counsel for filing the case in Karkardooma Courts, and as sufficient cause was shown by the DDA, in all fairness, the delay of 23 days should have been condoned keeping in view the peculiar facts and circumstances of the case.

20. The initial Award passed by the Arbitrator makes it very clear that an amount of Rs. 85,54,514/- was awarded on 12.01.2018, and on an Application preferred under Section 33 of the Arbitration and Conciliation Act, 1996, the sum was increased to Rs. 1,31,12,790/- by Award dated 30.06.2018.

21. This Court has carefully gone through the Additional Award, and the Arbitrator in the Original Award had given nil Award in respect of certain



claims. To be more specific, in respect of Claim No. 11, while in the Additional Award, the Arbitrator has Awarded Rs. 6,20,912/- plus Rs. 35,230/- towards Claim No. 11 in the Additional Award.

22. The facts of the case reveal that additional Award was not passed to correct the typographical errors, and it is a case where the Arbitrator has, in fact, changed the findings of the Award on an Application moved under Section 33 of the Arbitration and Conciliation Act, 1996, and, therefore, the limitation in the present case will certainly commence from the date of passing of the Additional Award dated 03.06.2018.

23. Learned Counsel for the Respondent has placed reliance upon a judgment delivered by the Hon'ble Supreme Court in the case of ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers And Contractors Private Limited***, (2021) 6 Supreme Court Cases 460. The Paragraphs 24, 25 and 63 of the aforesaid judgment reads as under:

“24. This aspect of the matter has been set out in the concurring judgment of Raveendran, J. in Consolidated Engg. [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] , as follows : (SCC pp. 188-90, paras 40-43)

“40. Let me next refer to the relevant provisions of the Limitation Act. Section 3 of the Limitation Act provides for the bar of limitation. It provides that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. “Prescribed period” means that period of limitation computed in accordance with the provisions of the Limitation Act. “Period of limitation” means the period of limitation prescribed for any suit, appeal or application by the



Schedule to the Limitation Act [vide Section 2(j) of the said Act]. Section 29 of the Limitation Act relates to savings. Sub-section (2) thereof which is relevant is extracted below:

‘29. (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.’

41. Article 116 of the Schedule prescribes the period of limitation for appeals to the High Court (90 days) and appeals to any other court (30 days) under the Code of Civil Procedure, 1908. It is now well settled that the words “appeals under the Code of Civil Procedure, 1908” occurring in Article 116 refer not only to appeals preferred under the Code of Civil Procedure, 1908, but also to appeals, where the procedure for filing of such appeals and powers of the court for dealing with such appeals are governed by the Code of Civil Procedure. (See decision of the Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel [Vidyacharan Shukla v. Khubchand Baghel, AIR 1964 SC 1099] .) Article 119(b) of the Schedule prescribes the period of limitation for filing an application (under the Arbitration Act, 1940), for setting aside an award, as thirty days from the date of service of notice of filing of the award.

42. The Arbitration and Conciliation Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The Arbitration and Conciliation Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings—both in court and in arbitration—under the



Arbitration and Conciliation Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the Arbitration and Conciliation Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the Arbitration and Conciliation Act.

43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.”
(emphasis in original)

25. When the Commercial Courts Act is applied to the aforesaid appeals, given the definition of “specified value” and the provisions contained in Sections 10 and 13 thereof, it is clear that it is only when the specified value is for a sum less than three lakh rupees that the appellate provision contained in Section 37 of the Arbitration Act will



be governed, for the purposes of limitation, by Articles 116 and 117 of the Limitation Act. Shri Deshmukh's argument that depending upon which court decides a matter, a limitation period of either 30 or 90 days is provided, which leads to arbitrary results, and that, therefore, the uniform period provided by Article 137 of the Limitation Act should govern appeals as well, is rejected. It is settled that periods of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed. In Boota Mal v. Union of India [Boota Mal v. Union of India, (1963) 1 SCR 70 : AIR 1962 SC 1716] , this Court referred to this aspect of the case, as follows : (SCR pp. 74-75 : AIR pp. 1718-19, para 4)

“4. ... Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in Nagendra Nath Dey v. Suresh Chandra Dey [Nagendra Nath Dey v. Suresh Chandra Dey, 1932 SCC OnLine PC 27 : (1931-32) 59 IA 283] and General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim [General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim, 1940 SCC OnLine PC 48 : (1939-40) 67 IA 416] . In the first case the Privy Council observed that : (Nagendra Nath Dey case [Nagendra Nath Dey v. Suresh Chandra Dey, 1932 SCC OnLine PC 27 : (1931-32) 59 IA 283] , SCC OnLine PC) ‘... The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, ... the only safe guide.’

In the latter case it was observed that : (Janmahomed Abdul Rahim case [General Accident Fire & Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim, 1940 SCC OnLine PC 48 : (1939-40) 67 IA 416] , SCC OnLine PC)

‘... a Limitation Act ought to receive such a construction as the language in its plain meaning imports. ... great hardship may occasionally be caused by statutes of limitation in cases of



poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases'."

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63. *Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."*

24. This Court has carefully gone through the aforesaid judgment, and the Hon'ble Supreme Court in the aforesaid case has held that, in case, the delay is explained satisfactorily, the Party has acted *bona fide*, and not in a negligent manner, the delay can be condoned. And, therefore, the judgment does not help the Respondent in any manner.

25. As delay involved in the present case can be condoned, subject to explanation of sufficient cause, if it is not more than 30 days as provided under the Statute.

26. The Hon'ble Supreme Court in the case of ***State of Haryana Vs. Chandra Mani and Others***, (1996) 3 Supreme Court Cases 132, in Paragraphs 11 and 12 has held as under:

"11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court — be it



by private party or the State — are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private



litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.

12. On the facts and circumstances of the case, we are of the opinion that it is a fit case for condoning the delay. The delay is accordingly condoned. The High Court is requested to dispose of the appeal as expeditiously as possible.”

27. In the aforesaid case, the Hon’ble Supreme Court has held that the explanation of sufficient cause should be considered with pragmatism, in justice oriented approach rather than technical detection of sufficient cause for explaining every day’s delay.

28. Keeping in view the aforesaid judgement, as sufficient cause has been explained, and even day to day delay has also been explained, the Trial Court has certainly erred in law and facts of the case while rejecting the Appeal for condonation of delay.



29. The Apex Court in the case of ***Collector, Land Acquisition, Anantnag and Another Vs. Msr. Katiji and Others***, (1987) 2 Supreme Court Cases 107, in Paragraphs 2 and 3 has held as under:

“2. An appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800 per cent (from Rs 1000 per kanal to Rs 8000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time barred being 4 days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave.

3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the



highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient



cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

30. The Hon'ble Supreme Court in the aforesaid case has held that no discretion should be made merely because State is seeking condonation of delay. However, at the same time, it has been held that the Court should adopt liberal, and justice oriented approach in the matter of condonation of delay.

31. In the considered opinion of this Court, the Trial Court ought to have condoned the delay keeping in view the peculiar facts of the case, as the delay was only of 23 days, and sufficient cause was explained by DDA in the matter.

32. Resultantly, this Court is of the opinion that the order passed by the Trial Court deserves to be set aside, and, is, accordingly, set aside.

33. The Application for condonation of delay in respect of the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 stands allowed.



34. The Trial Court is directed to decide the matter on merits, in accordance with law. This Court has not observed anything on merits. So far as the Award and Additional Award are concerned, the Trial Court shall be free to proceed in accordance with law in the matter. The observations made by this Court are only confined to the extent the Application preferred under Section 5 of the Limitation Act is concerned.

35. The aforesaid Appeal is allowed, and disposed of accordingly.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JULY 29, 2022
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