

**253-2 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CR-1311-2021 (O&M)
Date of Decision: 9th January, 2023**

National Highways Authority of India and another
... Petitioners

Versus

Om Pal and others
... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Raghuvjeet Singh Madan, Advocate,
Mr. Mahender Joshi, Advocate and
Mr. Dhruv Sood, Advocate for the petitioners.
Mr. Priyavarat Prasher, Advocate for private respondent.
Mr. Sharad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN , J.(Oral)

1. This is a petition challenging the order dated 2nd March, 2021 whereby the application for condonation of delay in filing appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') was allowed.

2. The issue raised by the learned counsel for the petitioner is that in view of the provisions of Section 34(3) of the Act delay beyond 120 days cannot be condoned and Section 5 of the Limitation Act is not applicable.

3. From the application for condonation of delay and the impugned order, it is evident that even the period of delay has not been mentioned.

4. Section 34 (3) of the Act is reproduced below:

“(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.”

5. The Supreme Court in ***Union of India v. Ms Popular Construction Co., AIR 2001 SC 4011; M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. and others, (2008) 7 SCC 169*** and ***Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., 2021 AIR (SC)1014*** held that Section 5 of the Limitation Act is excluded by Section 34(3) of the Arbitration Act, 1996 and that delay beyond 30 days after expiry of limitation period cannot be condoned.
6. The use of phrase 'but not thereafter' in proviso to Section 34(3) make it unequivocal that delay beyond 120 days cannot be condoned.
7. The impugned order passed is cryptic and bereft of any reasons even the facts have not been recorded.
8. The impugned order is set aside, the matter is remitted back to the court concerned for decide the application for condonation of delay afresh after giving fresh opportunity to the parties. Disposed of.

**(AVNEESH JHINGAN)
JUDGE**

9th January, 2023
Parveen Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No