

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 7305 of 2016 (O&M)

Date of decision: 19th January, 2023

Macrame Infrastructure Pvt. Ltd.

Appellant

Versus

Union of India and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Naresh Kaushal, Advocate for the appellant.

Mr. Ish Puneet Singh, Advocate for respondents No. 1 and 2.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed accompanied by an application for condonation of delay of 1240 days..
2. No reply has been filed on behalf of the respondents in spite the fact that service was complete on 14.9.2017.
3. Objections under Section 34 of the Act against award of arbitrator dated 3.5.2011 were decided on 10.1.2013 in the presence of counsel for the applicant-appellant.
4. The reason given in the application for condonation of delay is that there was communication gap between the counsel and the applicant

and on gaining the knowledge that objections have been decided, appeal along with application for condonation of delay was filed.

5. There are no specific pleadings as to how and when the applicant gained knowledge of dismissal of objections under Section 34 of the Act and as to when it approached the counsel who appeared on its behalf in proceedings under Section 34 of the Act.

6. It would not be out of place to mention that the applicant is a limited company and as per explanation neither it checked the status of the petition under Section 34 of the Act for more than three years nor the counsel informed regarding dismissal of petition.

7. The Supreme Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC, 459*** held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in [Section 5](#) of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.”

7.1 Further the Supreme Court in ***Pundlik Jalam Patil (D) by LRs.***

Versus Exe. Eng. Jalgaon Medium Project and another, 2008 (17) SCC 448, has held as under:

“..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.'”

7.2 The Supreme Court in case of ***Tribhuvanshankar Vs. Amrutlal, 2014 (1) RCR (Civil) 206***, has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

7.3 In case of ***Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534***, the Supreme Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned.

7.4 The Supreme Court in ***State of Nagaland v. Lipok Ao, 2012 (3) RCR (Civil) 73: 2012 (2) Recent Apex Judgments (RAJ) 482: 2012 (5) SCC 157***, in paragraph 24 has held as under:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."

[Emphasis supplied]

7.5 The Supreme Court in case ***Basawaraj and another v. Special Land Acquisition Officer 2017(3) PLR 299***, while dealing with the scope

of "sufficient cause" has laid down as under:

".....The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

7.6 In ***P.K. Ramachandran v. State of Kerala & Anr., 1997(4) R.C.R.(Civil) 242 : AIR 1998 SC 2276***, the Supreme Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under :-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."

8. Considering that no sufficient cause has been given explaining the inordinate delay of 1240 days in filing the appeal, the application is dismissed.

9. Resultantly, the appeal is dismissed as time barred.

[AVNEESH JHINGAN]

JUDGE

19th January, 2023

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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No