

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 43/2019, CM APPL. 5454/2019 (stay) and**  
**CM APPL. 5455/2019 (delay)**

Reserved on : 10.05.2023

Date of Decision : 26.05.2023

IN THE MATTER OF:

DELHI JAL BOARD

..... Appellant

Through: Mr. S.K. Singh, Advocate

Versus

M/S HANUMAN CONSTRUCTION CO.

..... Respondent

Through: Mr. Atul K. Bandhu and Mr. M.K.

Gaur, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J.**

1. By way of the present appeal filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 read with Section 151 CPC, the appellant seeks setting aside of the judgment dated 18.11.2017 in ARB 32/2017 whereby the application filed by the appellant under Section 39 Rule 3 of Arbitration and Conciliation Act and Section 5 of the Limitation Act seeking condonation of delay in re-filing the petition came to be dismissed.

2. Learned counsel for the appellant while assailing the impugned order contended that the trial court failed to appreciate the facts and the

explanation provided in the application and passed the impugned order on mere technicalities.

3. Learned counsel for the respondent, on the other hand, has contended that not only there was delay of 287 days in re-filing the petition under Section 34 of the Arbitration and Conciliation Act even the present appeal is filed after a delay of nearly 327 days.

4. A perusal of the records would show that the respondent had filed a claim wherein it was awarded a work of replacement of undersized sewers in Model Town, Delhi, Civil Line Zone vide Award dated 25.10.2002. The said work was to start from 03.11.2002 and to be completed within 15 months from the date of start. The dispute arose as the appellant failed to provide with the requisite permissions, resulting in filing of statement of the claim. Vide award dated 15.09.2006, the claim was allowed. The appellant filed objections under Section 34 of the Act however, the same were returned to the appellant for removal of defects on 16.12.2006. The petition was re-filed on 14.01.2006 however, the defects were not removed. The appellant filed an application under Section 39 Rule 3 of the Arbitration and Conciliation Act and Section 5 of the Limitation Act seeking condonation of delay of 287 days in re-filing the petition. It was averred that after filing of the petition, the appellant's counsel had to go outstation on account of demise of his uncle in Ambala (Haryana) and because of the fact that the uncle had no son, the appellant could come only in the first week of February, 2007. It was also stated that the counsel's clerk inadvertently tagged the file with another case. It is only when the contractor approached the appellant's office in September, 2007, it came to their knowledge that the objections

were not listed on account of the defects. The trial court while noting the conduct of the appellant dismissed the application. It was observed that the appellant failed to provide any sufficient ground for condonation of delay in re-filing. It was observed that the explanation provided by the appellant was mere negligence.

5. Even the present appeal is accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay of 327 days. In the application filed under Section 5 of the Limitation Act, it has been stated that after pronouncement of the decision on 18.11.2017, the certified copy was applied on 21.11.2017 and the same was received on 24.11.2017. As the appellant sought legal opinion, it took some time in taking administrative decisions and seeking approval of the Competent Authority which took substantial time and thereafter the file was handed over to the counsel on 09.10.2018 for preparing the appeal. It took some time in drafting the appeal which eventually came to be filed on 09.01.2019.

6. Earlier in M/s Simplex Infrastructure Ltd. v. Union of India, the Supreme Court observed as under:-

*"13. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along*

*with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.*

*14. The respondent received the arbitral award on 31 October 2014. Exactly ninety days after the receipt of the award, the respondent filed an application under Section 34 of the 1996 Act before the District Judge, Port Blair on 30 January 2015. On 12 February 2016, the District Judge dismissed the application for want of jurisdiction and on 28 March 2016, the respondent filed an application before the High Court under Section 34 of the 1996 Act for setting aside the arbitral award. After the order of dismissal of the application by the District Judge, the respondent took almost 44 days (excluding the date of dismissal of the application by the District Judge and the date of filing of application before the High Court) in filing the application before the High Court. Hence, even if the respondent is given the benefit of the provision of Section 14 of the Limitation Act in respect of the period spent in pursuing the proceedings before the District Judge, Port Blair, the petition under Section 34 was filed much beyond the outer period of ninety days."*

7. In M/s. N. V. International v. The State of Assam & Ors., the Supreme Court while considering the aspect of condonation of delay in filing the appeal under Section 37 referred to the following observations of its decision in Union of India v. M/s Varindera Constructions Ltd. Etc.:-

*"4) Having heard learned counsel for both sides, we may observe that the matter is no longer res integra. In SLP (C) No. 23155/2013 [Union of India vs. Varindera Const. Ltd.], this Court, by its judgment and order dated 17.09.2018 held thus:*

*"Heard the learned Counsel appearing for the parties.*

*By a judgment dated 19.04.2018 in Civil Appeal Nos. 3994-3995 of 2018 [Union of India vs. M/s*

*Varindera Constructions Ltd. Etc.], this Court has in near identical facts and circumstances allowed the appeal of the Union of India in a proceeding arising from an Arbitral Award.*

*Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10.04.2013 has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the self-same proceeding under Section 37 should be covered by the same drill.*

*Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul and Others vs. Keshwar Lal Chaudhuri and Others, AIR 1941 Federal Court 5, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.*

*In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these Special Leave Petitions on the facts of this particular case.*

*The Special Leave Petitions stand disposed of accordingly.*

*Pending applications, if any, also stand disposed of."*

8. It was further held as under:-

*"5) We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following Lachmeshwar Prasad Shukul and Others (supra), as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned."*

9. Appellant suffers from a double whammy. Both, the appeal before this court under Section 37, and the objections filed before the court below under Section 34, are beyond resurrection.

10. Even if the appellant is given the widest latitude, and the reasons for delay pleaded by it, both for the objections before the court below, and this appeal, were to be accepted as such-on their face value, neither the court below was, nor this court now is jurisdictionally empowered to entertain the objections and this appeal, respectively.

11. Appeal is dismissed along with pending applications.

12. Consequently, the interim order granting stay of execution of proceedings is vacated.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**MAY 26, 2023**

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