



**FAO-2146-2024(O&M) and
FAO-2083-2024(O&M)**

112 (2 CASES)

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

(1) **FAO-2146-2024(O&M)**

Jagbir Singh

...Appellant

Versus

State of Haryana and others

...Respondents

(2) **FAO-2083-2024(O&M)**

Jagbir Singh

...Appellant

Versus

State of Haryana and others

...Respondents

Date of decision:-14.10.2024

CORAM: HON'BLE MR.JUSTICE SUVIR SEHGAL

Present: Mr.S.K. Daaria, Advocate
for the appellant in both cases.

Mr.Aman Bahri, Addl.A.G., Haryana
for respondents No.1 and 2 in both cases.

Mr.Vinish Singla, Senior Panel Counsel
for respondent No.3 – UOI in both cases.

SUVIR SEHGAL, J.(ORAL)

**CM-8053-CII-2024 in
FAO-2146-2024
&
CM-7895-CII-2024 in
FAO-2083-2024**

1. For the reasons given in the applications, they are allowed.



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2. Delay in re-filing of the appeals is condoned.

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3. This order shall dispose of both the above-noted appeals as they involve common questions of law and fact. For the sake of convenience, factual position is being taken from **FAO-2146-02024**.

4. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') assailing judgment dated 01.08.2022, passed by the learned Additional District Judge, Gurugram, whereby application for condonation of delay and consequently objections under Section 34 of the Arbitration Act have been dismissed. Appeal is accompanied with an application for condonation of delay of 291 days, in its filing.

5. Factual matrix leading to the filing of the appeal is that the appellants are owners of land, which has been acquired by the respondents for Western Dedicated Freight Corridor vide notifications issued under the Railways Act, 1989. The competent authority announced award dated 23.11.2012 assessing the compensation for the acquired land. Dissatisfied with the assessment, appellants filed applications under the Railways Act for enhancement of compensation, which was culminated in passing of award dated 17.02.2018, Annexure A3. The appellants preferred objections under Section 34 of the Arbitration Act, alongwith application for condonation of delay, which have been rejected by order impugned herein.

6. While inviting attention of the Court to Section 34(3) of the



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Arbitration Act, counsel for the appellant submits that the learned Additional District Judge has failed to exercise the power vested in it for condonation of delay. He asserts that the objections preferred by the appellants were within the time as prescribed under the Arbitration Act. Counsel has placed reliance upon the judgment of the Supreme Court in ***Chintels India Limited Versus Bhayana Builders Private Limited (2021) 4 SCC 602*** in support of his arguments.

7. Advance copy of the appeal has been served upon the respondents. Counsel for the respondents submits that the objections were filed beyond the prescribed period as laid down under Section 34 of the Arbitration Act and have rightly been rejected by the learned Additional District Judge.

8. I have heard counsel for the parties and considered their respective submissions.

9. Section 34 (3) of the Arbitration Act provides a period of limitation of three months for preferring objections from the date of delivery of the signed copy of the Award to the appellant, which can be further extended by another period of 30 days, if the party challenging the Award is able to show sufficient cause. This is the settled legal position. In ***Union of India Versus M/s Popular Construction Company, 2001 AIR (SC) 4010; M/s Consolidated Engineering Enterprises Versus Principal Secretary, Irrigation Department and others, (2008) 7 SCC 169; M/s Simplex Infrastructure Limited Versus Union of India, 2019 (1) RCR (Civil) 205, and Mahindra and Mahindra Financial Services***



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162, the Supreme Court has held that the limitation for filing objections is prescribed under Section 34 of the Arbitration Act and the extent to which it can be condoned is also circumscribed. It has been clarified that Section 5 of the Limitation Act, 1963, is not applicable to condone the delay beyond the period prescribed under Section 34 (3) of the Arbitration Act. The result is that application under Section 5 of the Limitation Act, 1963, is ousted by proviso to Sub-Section 3 of Section 34 of the Arbitration Act.

10. Adverting to the facts of the present appeal, counsel for the appellant could not dispute that the signed copy of the award was dispatched to the appellant under registered postal cover on 03.03.2018 at his residential address. Under Section 27 of the General Clauses Act, 1897, there is a presumption of service of registered post in case it is not received back. Although, the presumption is rebuttable, but no evidence to the contrary has been led by the appellant. It can therefore be safely presumed that the signed copy of the award was delivered to the appellant within one week or ten days of dispatch. The objections under Section 34 of the Arbitration Act have been instituted by the appellant on 27.07.2018, which are barred by time. The stand of the appellant that the signed copy of the award was delivered on 25.07.2018 cannot be believed in the absence of any evidence to that effect. Although an application for condonation of delay was moved by the appellant, but in view of the settled legal position as has been noticed in the preceding paragraph, the delay could not be condoned as the application was not maintainable. The



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judgment relied upon by the counsel for the appellant has no applicability as it deals with interpretation of Section 37 of the Arbitration Act. This Court does not find any illegality or infirmity in the impugned order passed by the learned Additional District Judge, Gurugram, which is hereby affirmed.

11. Appeal being bereft of merit is dismissed with no order as to costs.

12. Application for condonation of delay is also dismissed as main appeal has been found to be meritless.

14.10.2024
Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No