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

Date of decision: 27.11.2024

+ **FAO(OS) (COMM) 22/2024, CM APPL. 8757/2024-Stay & CM APPL. 8758/2024-Delay 121 days**

UNION OF INDIA

.....Appellant

Through: Ms. Arunima Dwaivedi, CGSC with
Ms. Pinky Panwar and Mr. Aakash
Pathak, Advs

versus

BESCO LIMITED (WAGON DIVISON)

.....Respondent

Through: Mr. Anirudh Bakhru, Adv

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeks to assail the order dated 31.07.2023 passed by the learned Single Judge in OMP (COMM) No. 467/2019. Vide the impugned order, the learned Single Judge has rejected the application filed by the appellant under Section 34 of the Act to assail the Arbitral Award dated 02.05.2019 as rectified on 31.07.2019.

2. The appeal is accompanied by an application seeking condonation of 121 days delay in filing the appeal. At the outset, learned counsel for the appellant submits that though the application inadvertently mentions 121 days, the appeal is barred only by 112 days. In support of the application,



she submits that the delay in filing of the appeal has occurred primarily because of the procedural delays involved in filing an appeal on behalf of the Union of India (UoI). Furthermore, the filing of the appeal was also delayed for about thirty days during which period she was attending to her ailing father. By placing reliance on an order dated 24.11.2023 passed by the Apex Court in an appeal arising out of **SLP (C) No.12180/2023** titled ***M/s Jaitely Construction Co. v. Union of India***, she submits that the Apex Court while condoning the delay of 244 days in preferring an appeal under Section 37 of the Act, has clarified that in exceptional cases the delay in filing an appeal under Section 37 can be condoned even beyond the stipulated period of limitation. She, therefore, prays that by taking into account the details furnished in paragraph no.2 of the application, the delay in filing the appeal be condoned.

3. On the other hand, Mr.Anirudh Bakhru, Advocate, appearing for the respondent opposes the application for condonation of delay by urging that, merely, because the delay in filing an appeal under section 37 of the Act can be condoned even beyond the period of limitation does not imply that the inordinate delay of 112 days can be condoned without sufficient cause being shown. He submits that even if the 30 days period during which the learned counsel for the appellant claims she was under a personal difficulty were to be ignored, the appeal would still be barred by 82 days for which there is no justifiable explanation. By drawing our attention to the list of dates set out in paragraph no.2 of the application, he submits that the very own admission by the appellant that the case file was handed over to the Government counsel for filing of an appeal only on 12.09.2023 i.e., 42 days after the



passing of the impugned judgment in itself shows that the appellant has treated a commercial matter like the present in a most callous and negligent manner.

4. He contends that it is trite law that in a matter pertaining to the Arbitration and Conciliation Act as also those pertaining to the Commercial Courts Act, condonation of delay in filing an appeal can be granted by way of an exception and not by way of a rule. Furthermore, merely because the appellant is the UoI, it cannot claim that a lenient view should be adopted for considering its application for condonation of delay. In support of his plea, he places reliance on the decision of the Apex Court in ***Government of Maharashtra v. M/s Borse Brothers Engineers & Contractors Pvt Ltd., 2021 Vol. 6 SCC 460***. He, therefore, prays that the application be dismissed alongwith the appeal which is clearly barred by limitation.

5. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting that the parties are *ad idem* that the delay in filing of the appeal is of 112 days. We may now proceed to note the relevant extracts of paragraph no.2 of the application wherein the appellant has sought to explain the sequence of events leading to the delay of 112 days in filing of the appeal. The same reads as under:-

“31.07.2023 The impugned judgment/ order passed by the Hon'ble Single Judge of this Hon'ble Court.

12.09.2023 The matter was assigned to the one Central Government Standing Counsel for the drafting of the Appeal under section 37 of the Arbitration and Conciliation Act and then subsequently it was marked to the present counsel.



25.09.2023 The present counsel received the engagement letter from the Ministry of Railway.

29.09.2023 The present counsel received the complete file from the previous counsel.

03.10.2023 Instruction received from the Department.

25.10.2023 The newly engaged Counsel in the instant matter was unable to devote enough time in drafting as her father was not keeping well and needed continuous medical care.

17.11.2023 The counsel started drafting the appeal but came to know that some of the volumes of the case files was misplaced in the chamber and couldn't be traced. The case files run into several volumes.

20.11.2024 The counsel for the appellant tried to reach out to the department for missing files, but was of no help.

12.12.2023 Some of the missing volumes of the OMP files were rearranged and were scanned, marks removed and was organized to be marked as annexure with the appeal.

24.12.2024 to 02.01.2024

The counsel for the Petitioner was out of town for some personal reasons.

13.01.2024 The draft petition was sent to the department for vetting

17.01.2024 The counsel received the papers from the department.

19.01.2024 The petition was compiled scanned and numbered.



20.01.2024 The Appeal under section 37 of Arbitration and Conciliation Act filed.”

6. From a perusal of the aforesaid list of dates set out by the appellant, we find that it is the appellants' own contention, that even though the impugned order was passed on 31.07.2023, the case file was handed over to the Government counsel only on 12.09.2023, when 42 days out of the 60 days of the limitation period had already expired. Further, we find that as per the appellant, the file then remained with one counsel or the other with instructions for filing of appeal being given to the present counsel on 03.10.2023. There is no explanation for the period from 03.10.2023 to 25.10.2023 on which date, learned counsel for the appellant had urged that her father became unwell and therefore, she could not devote time to draft the appeal till 17.11.2023 on account of her father's ill health. It has been further explained that when the learned counsel for the appellant started to draft the appeal on 17.11.2023, she realized that she required further documents for which purpose she contacted the department on 20.11.2023 with a request to provide her with the complete case file but no action was taken on her request till end of December, 2024 and it is only then that she was able to forward the drafted appeal to the department for vetting on 13.01.2024. It was thereafter, that the appeal after being signed was received by the learned counsel on 17.01.2024 and was consequently, filed on 20.01.2024.

7. From the aforesaid narration of events, we are unable to find any sufficient cause for this inordinate delay of 112 days, except for the period of 24 days between 25.10.2023 to 17.11.2023, during which, the learned



counsel for the appellant has stated she was in personal difficulty. In our considered view, the explanation for the remaining 82 days of delay is absolutely sketchy and vague. Learned counsel for the appellant has urged that this Court ought to appreciate that since the appellant is the Government, the appeal could not have been filed without the requisite approvals and therefore, the time spent in getting the said approvals ought to be taken into account while considering its prayer for condonation. In our considered view, even though the learned counsel for the appellant is correct in urging that in appeals filed by Government authorities, it is necessary to seek requisite approvals before filing of any appeal, this cannot imply that despite these approvals being sought belatedly, the delay should be condoned.

8. Further, in the present case it is evident that the appellant has given no explanation whatsoever for the period between 31.07.2023 to 12.09.2023 and thereafter, again for the period between 20.11.2023 to 17.01.2024. We also find that it is the appellant's own case that though the learned counsel for the appellant had tried to reach out to the department for providing the missing documents on 20.11.2023, she received no response and was supplied the documents belatedly. This in itself is sufficient for us to hold that the appellant has been most negligent in pursuing the appeal.

9. In this regard, we may refer to the decision in **Borse Brothers Engineers** (supra) relied upon by the respondent, wherein the Apex Court in paragraph no.59 of the said decision held that a different yardstick for condonation of delay cannot be applied for the Government. The relevant extracts of paragraph no.59 read as under:-



*“59. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in **Postmaster General v. Living Media India Ltd.**, (2012) 3 SCC 563”*

10. In the very same decision, the Apex Court also explained that in cases arising out of Arbitration and Conciliation Act and those arising out of the Commercial Courts Act, condonation can be granted only in exceptional circumstances and not as a matter of rule. We may, therefore, note hereinbelow paragraph no.58 of the said decision, wherein the Court referred to its earlier decision in **Basawaraj v. Land Acquisition Officer**, (2013) 14 SCC 81, with approval by observing that the expression ‘sufficient cause’ cannot be a ground for entertaining negligent and stale claims.

*“58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in **Basawaraj v. Land Acquisition Officer**, (2013) 14 SCC 81, has held:*

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and



*circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. 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. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336] , *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953] , *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)*

*10. In *Arjun Singh v. Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”*

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned,



whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

*12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."
An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents



disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.” (emphasis supplied)



11. Further, we find that in paragraph no.63 of the same decision in **Borse Brothers Engineers** (supra), the Apex Court summarized the position that condonation of delay in a matter under the Arbitration and Conciliation Act, is permissible only in exceptional circumstances. It would, therefore, be apposite to refer hereinbelow to the said paragraph as well.

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(1A) 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.

12. In the light of the aforesaid, we find that the reasons set out by the appellant for seeking condonation of delay cannot be said to be falling within the category of either 'sufficient cause' or 'exceptional circumstances'. Though learned counsel for the appellant has, by placing reliance on the decision in **Jaitely Construction Ltd.** (supra), vehemently urged that once the Apex Court had condoned the delay of 244 days in filing the appeal under Section 37 of the Arbitration and Conciliation Act, the delay in the present case being 112 days, this Court ought to take a liberal



view and condone the said delay. Having perused the said decision, we find that in ***Jaitely Constructions*** (supra) the Apex Court had condoned the delay of 244 days in filing the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 only upon finding that as per the documents produced by the appellants therein, alongwith the application, an exceptional case was made out. On the other hand, in the present case, we find that the appellant has acted in a most callous and negligent manner and even the bald explanation given in the application is not supported by any documents. Once no sufficient cause for seeking condonation of delay has been shown, the decision in ***Jaitely Constructions*** (supra) will not be applicable to the present case.

13. Further, we are of the view that it is not merely the number of days of delay, which would be material for considering the application seeking condonation of delay but it is the sufficiency of reasons for the delay which would be material to determine whether the delay should be condoned. For this purpose, we may refer to paragraph 65 of the decision of the Apex Court in ***Borse Brothers Engineers*** (supra), wherein the Court had, while dealing with Civil Appeal arising out of SLP (C) NO.665/2021, declined to condone the delay of 131 days beyond the 60 days period provided for filing of an appeal under the Commercial Courts Act. The relevant extract of the said decision reads as under:-

“65. Apart from this, there is a long delay of 131 days beyond the 60- day period provided for filing an appeal under section 13(1A) of the Commercial Courts Act. There is no explanation worth the name contained in the condonation of delay application, beyond the usual file-



pushing and administrative exigency. This appeal is therefore dismissed.”

14. In fact, it also emerges that in the same decision, the Apex Court while dealing with SLP (C) No.15278/2020 had declined to condone even the delay of 75 days in filing an appeal which was otherwise required to be filed within 60 days under the Commercial Courts Act, 2015. It would, therefore, be apposite to refer hereinbelow to the paragraph nos. 67 and 68 of the said decision as well.

“67. That apart, on the facts of this appeal, there is a long delay of 75 days beyond the period of 60 days provided by the Commercial Courts Act. Despite the fact that a certified copy of the District Court’s judgment was obtained by the respondent on 27.04.2019, the appeal was filed only on 09.09.2019, the explanation for delay being:

“2. That, the certified copy of the order dated 01/04/2013 was received by the appellant on 27/04/2019. Thereafter the matter was placed before the CGM purchase MPPKVVCL for the compliance of the order. The same was then sent to the law officer, MPPKVVCL for opinion.

3. That after taking opinion for appeal, and approval of the concerned authorities, the officer-in-charge was appointed vide order dated 23/07/2019.

4. That, thereafter due to bulky records of the case and for procurement of the necessary documents some delay has been caused however, the appeal has been prepared and filed to pursuant to the same and further delay.

5. That due to the aforesaid procedural approval and since the appellant is a public entity formed under the Energy department of the State Government, the delay caused in filing the appeal is bonafide and which deserve[s] to be condoned.



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68. This explanation falls woefully short of making out any sufficient cause. This appeal is therefore allowed and the condonation of delay is set aside on this score also.”

15. In the light of the aforesaid, we are of the considered view that the explanation furnished by the appellant does not show any sufficient cause whatsoever for condonation of delay of 112 days in filing of the appeal, which was otherwise required to be filed within 60 days as prescribed under Section 37 of the Arbitration and Conciliation Act.

16. We, therefore, find no merit in the application seeking condonation of delay which is, accordingly, dismissed. Consequently, the appeal alongwith accompanying applications also stands rejected.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 27, 2024/Ab