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

% *Date of Decision: 28.05.2024*

+ **FAO (COMM) 106/2024 & CM APPL. 32668/2024(Stay)**
NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... Appellant

Through: Mr. Sumit Kumar Vats, Adv.
versus

SHRI DEVENDER KUMAR GUPTA

..... Respondent

Through: In person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

CM APPL. 32670/2024(Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 32669/2024 (condonation of delay in filing) and CM APPL. 32671/2024(condonation of delay in re-filing)

3. The present appeal has been filed after a considerable delay. The appellant has filed the present application seeking condonation of a delay of 133 (one hundred and thirty-three) days in filing the present appeal.
4. The only explanation provided by the appellant for seeking condonation of delay is that the appellant had consulted his advocate



and had various internal discussions and, the draft of the appeal required vetting and was required to be scrutinized at various levels. The same also required furnishing of original documents. It is stated that the final version of the appeal was sent to the advocate on 07.02.2024 and was filed immediately thereafter.

5. In addition to the delay in filing the present appeal there is also an inordinate delay of 70 (seventy) days in re-filing the present appeal as the appeal filed initially was defective.

6. In *N.V. International v. State of Assam & Ors.: (2020) 2 SCC 109*, the Supreme Court had taken a view that the delay in filing an appeal under Section 37 of the A&C Act cannot be condoned beyond the period of 30 days as stipulated in the proviso to Section 34(3) of the A&C Act. The Supreme Court had held that the same principles would be applicable to an appeal against the decision rendered in Section 34 of the A&C Act as well. The said decision was overruled by the Supreme Court in a later decision in *Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. Borse Brothers Engineers & Contractors Pvt. Ltd.: (2021) 6 SCC 460*. The Supreme Court rejected the contention that the court had no power to condone a delay in filing an appeal under Section 37 of the A&C Act beyond the period of thirty days. However, the Supreme Court also explained that it would not be apposite to take an elastic approach in matters of delay in filing appeals under Section 37 of the A&C Act or under the Commercial Courts Act, 2015. The relevant extract is set out below:-



“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 pressing negligent and stale claims...

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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 under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) 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....”

7. In the present case, the appellant has not provided any credible explanation for seeking condonation of delay of a period of one hundred and thirty-three days. As noted above, the only explanation provided by the appellant is that discussions with the advocate, vetting of the appeal, and its scrutiny at various levels took time. A delay of 133 (one hundred and thirty-three) days, which is more than twice the period available for filing the present appeal, cannot be accepted.

8. We were thus inclined to dismiss the present application and had



indicated so. However, we find that the appellant has miscalculated the period of delay as 133 days. The impugned order was passed on 23.09.2023 and the present appeal was filed on 12.02.2024. Thus the appeal was filed 81 (eighty-one) days after expiry of the initial period of sixty days available for filing the present appeal. The appellant claims that it had applied for the certified copy of the impugned order on 16.10.2023 and the same was prepared on 28.11.2023. Thus, a period of 44 days is required to be excluded for the purposes of computing the period of limitation for filing the present appeal. Thus there is a delay of 37 (thirty-seven) days in filing the appeal and not 133 (one hundred and thirty-three days) as calculated by the appellant.

9. It is also material to note that although it is stated that the delay was caused on account of ensuring due vetting of appeal and production of all original documents, it is seen that appeal as filed was also defective and the appellant took further 70 days to cure the defects.

10. In view of the above, we allow the present applications and condone the said delay in filing and refiling the present appeal.

FAO (COMM) 106/2024 & CM APPL. 32668/2024(Stay)

11. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an order dated 23.09.2023 passed by the learned Commercial Court in OMP (COMM) No. 16/2019 captioned *Union of India v. Devendra Kumar Gupta*. The appellant had filed the said application under Section 34 of the A&C Act impugning an arbitral award dated 26.06.2019 (hereafter *the impugned award*).



12. The learned Commercial Court had found that the said application was beyond the period of limitation as stipulated under Section 34(3) of the A&C Act.

13. The impugned award was received electronically by the appellant on 26.06.2019 and therefore, time for filing the application for setting aside the impugned award expired on 26.09.2019. However, the application was filed on 28.09.2019. Concededly, no application was filed by the appellant to satisfy the Court that it was prevented from filing the application within the stipulated period of three months.

14. Notwithstanding the same, the learned Commercial Court had also examined the appellant's challenge to the impugned award on merits and had found that it was not vitiated by patent illegality as contended on behalf of the appellant.

15. An arbitrator was appointed by the Central Government under Section 3G (5) of the National Highways Act, 1956. However, the respondent had requested for appointment of an independent arbitrator and had moved the Court for the said relief by filing a petition under Section 14 of the A&C Act being OMP (T) 5/2017. The said petition was allowed and this Court by an order dated 08.12.2017 passed in OMP (T) 5/2017 appointed the sole arbitrator (hereafter *the Arbitral Tribunal*) to adjudicate the question of compensation to be paid to the respondent in respect of its property that was acquired by the appellant under Section 3A of the National Highways Act, 1956.

16. The respondent claims to be owner of the land admeasuring 550 sq. mts. comprising in Khasra No. 144 in Village Kulchandi, Tehsil Roorkee, District Hardwar, Uttarakhand. The said land was acquired.



The appellant had determined the compensation for the said land at the rate of a rate of ₹1095.60/- per sq. mt. This was not accepted by the respondent and he claimed compensation at the rate of ₹3,100/- per sq. mt. along with 10% surcharge.

17. The said dispute was the subject matter of consideration before the Arbitral Tribunal. In addition to the enhanced compensation, the respondent (who was the claimant before the Arbitral Tribunal) had also claimed interest at the rate of 18% per annum on the enhanced compensation. In support of its claim, the respondent had produced an arbitral award in respect of land comprising in Khasra No.136 and 139, whereby compensation of a sum of ₹3,100/- per sq. mt. was awarded. It is the respondent's case that land comprising in Khasra No. 136 and 139 was in vicinity of the respondent's land and had been acquired in terms of the same notification issued under Section 3A of the National Highways Act, 1956.

18. The record of the arbitral proceedings show that parties were granted liberty to lead further evidence, however, no further evidence was led by either party. The arbitral award produced by the respondent also noted that there were recorded transactions where the sale value of land ranged from ₹6395/- per sq. mt. to ₹7758/- per sq. mt.

19. After hearing the rival contentions, the Arbitral Tribunal accepted the respondent's claim for enhanced compensation at the rate of ₹3,100/- per sq. mt. instead of ₹1095.60/- per sq. mt. as accepted by the appellant.

20. It is contended on behalf of the appellant that the impugned award is vitiated by patent illegality as it is not based on any evidence.



The said contention is unmerited. A plain reading of the impugned award indicates that it is based on material as produced by the respondent. As noted above, the respondent had relied upon another award passed in respect of land comprising in Khasra No. 136 and 139. The fact that such an award was rendered is not disputed. In these circumstances, this Court is unable to accept that the award is not based on any evidence or material. The learned Commercial Court had rightly noted that the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908 are not applicable to arbitral proceedings and thus, strict rules of evidence do not apply.

21. The appellant's contention that it was not afforded sufficient opportunity to contest the claim is also unmerited. A plain reading of the impugned award indicates that sufficient opportunity was granted to the appellant to present its case.

22. None was present on behalf of the appellant in the first preliminary hearing held before the Arbitral Tribunal on 13.01.2018. Thereafter, a notice for second preliminary hearing was sent to the parties and a hearing was fixed on 23.02.2018. On this date as well, none had represented the appellant. Thereafter, on 21.03.2018 the respondent (claimant before the Arbitral Tribunal) had submitted documents in support of its claim and the matter was fixed by the Arbitral Tribunal on 18.05.2018. On 18.05.2018 as well, none appeared on behalf of the appellant. However, one more opportunity was granted to the appellant to enter appearance and file its response and a revised schedule was fixed. The matter was thereafter listed by the Arbitral Tribunal on 27.07.2018. On this date as well, none was present on



behalf of the appellant and in view of the above, the Arbitral Tribunal decided to proceed ex-parte against the appellant and fixed the next date of hearing on 23.08.2018.

23. At the hearing held on 23.08.2018, the Arbitral Tribunal had framed certain issues and listed the matter for final hearing on 12.09.2018. At that stage, the learned counsel for the appellant had appeared. The appellant was given full opportunity to file an appropriate application. Thereafter, the appellant filed an application for recalling the order dated 23.08.2018, which was allowed by the Arbitral Tribunal on 31.10.2018. The appellant was given further time till 05.12.2018 to file its Statement of Defence and to complete the pleadings. In the meanwhile, the time for making an award had elapsed. Although, it is clear that much of the delay was caused on account of non-appearance of the appellant, the appellant declined to agree for the extension of time for the Arbitral Tribunal to make an award. In these circumstances, the respondent had approached this Court and secured orders for extending the time for making the award.

24. The matter was fixed for final hearing by the Arbitral Tribunal 16.03.2019 and once again, an adjournment was sought on behalf of the appellant. The appellant had sought further time on the ground that it had preferred a special leave petition, whereby this court had extended the time for making the award. The matter was thereafter heard by the Arbitral Tribunal on 05.04.2019 and 22.04.2019. Both the parties had also filed their written submissions on 06.05.2019. The record of the arbitral proceedings amply demonstrates that the appellant was given full opportunity to not only contest the claim but also lead evidence.



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25. In view of the above, we find no fault with the decision of the learned Commercial Court in rejecting the appellant's application for setting aside the impugned award.

26. The present appeal is, accordingly, rejected. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 28, 2024/r