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

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Date of Decision: 27.03.2024

+ **FAO(COMM) 56/2024**

UNION OF INDIA THROUGH GENERAL MANAGER
NORTHERN RAILWAY AND ORS Appellants
Through: Mr.Om Prakash, SPC.

versus

M/S SANOJ KUMAR MODI Respondent
Through: Mr.Smarth Chowdhary,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

CM APPL. 18347/2024 (condonation of delay in re-filing)

1. For the reasons stated in the application, the delay in re-filing the appeal stands condoned.
2. The application stands disposed of.

CM APPL. 18345/2024 (exemption) CM APPL. 18346/2024 (exemption)

3. Exemptions are allowed, subject to just exceptions.
4. The applications stand disposed of.

FAO (COMM) 56/2024 & CM APPL. 18344/2024 (stay)

5. The appellants have filed the present appeal impugning the



judgment dated 24.03.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court in OMP (COMM) No.139/2022 captioned *Union of India v Sanoj Kumar Modi*.

6. The appellants had filed the aforesaid application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning the Arbitral Award dated 05.02.2022 (hereafter *the impugned award*). Admittedly, the appellants had received a copy of the impugned award on 10.02.2022. Thus, the application to set aside the impugned award under Section 34 of the A&C Act was required to be filed within a period of three months from the date of the receipt of the impugned award, that is, on or before 10.05.2022. However, the application was filed before the learned Commercial Court on 18.08.2022. The learned Commercial Court held that the application was filed beyond the period of limitation that could be condoned in terms of the proviso to Section 34(3) of the A&C Act. Accordingly, the appellants' application to set aside the impugned award was dismissed as barred by limitation.

7. It is material to note that the Supreme Court by an order dated 10.01.2022 passed in *Suo Motu W.P.(C) No.03/2020 In Re: Cognizance for Extension of Limitation* had extended the period of limitation for a period of 90 days with effect from 01.03.2022 in cases where the period of limitation expired within the period from 15.03.2020 to 28.02.2022. In other cases, the period falling within the said period was required to be excluded for calculation of the period of limitation. Thus, the period from the receipt of the impugned award



till 28.02.2022 was required to be excluded for the purposes of computing the period of limitation to file the application under Section 34(3) of the A&C Act. Thus, a period of 18 days – the period from 10.02.2022, being the date the impugned award was received, to 28.02.2022 – is required to be excluded for the purposes of calculation of limitation.

8. As noted above, the three months available to the appellants to file the petition expired on 10.05.2022. In view of the benefit granted by the Supreme Court in *Suo Motu W.P.(C) No.03/2020 (supra)* the appellant would have a further 18 days period to file the application to set aside the impugned award. Accordingly, the period of limitation for filing the said application under Section 34 of A&C Act expired on 28.05.2022.

9. In terms of the proviso to Section 34(3) of the A&C Act, the delay beyond the period of three months could be condoned provided that the appellants were able to show sufficient cause that prevented it from filing the appeal within the said period. However, the power of the court to condone the delay is restricted to a period of 30 days. A Court cannot condone the delay beyond the stipulated period of 30 days. This issue is no longer *res-integra* and stands authoritatively concluded by the Supreme Court by the decision in *Union of India v. Popular Construction Company: 2001 (8) SCC 470*.

10. In view of above, it is apparent that the appellants' appeal was filed beyond the period of limitation and the delay in filing the appeal



could not be condoned.

11. The learned counsel appearing for the appellants submits that the reasons for the delay are *bona fide* and the concerned officers had no power or authority to file the application under Section 34 of the A&C Act till they secured an opinion from the Ministry of Law and Justice, Government of India. Since the said opinion was received on 25.05.2022, the appellants could not have filed the application before the said date. He submits, therefore, that the period of limitation must necessarily be construed as commencing from the date when the concerned officer (General Manager) derived the authority to file the application to set aside the impugned award under Section 34 of the A&C Act.

12. He referred to the decision of the Supreme Court in ***Union of India v. Tecco Trichy Engineers & Contractors: (2005) 4 SCC 239***. And, on the strength of the said decision, submitted that the limitation would not commence with the physical receipt of the impugned award, but on the date when the impugned award was received in the hands of an officer entitled to take action in this regard. He submits that since the concerned General Manager had no authority to file the application to set aside the impugned award without the legal opinion, the period of limitation to file the application to set aside the impugned award would not commence with the receipt of the impugned award in his hands but would commence on the date when he received the legal opinion from the Ministry of Law and Justice.



13. The said contention is unsubstantial. In essence, the appellants seek rewriting of the law, which certainly is beyond the jurisdiction of this Court. The process for securing internal approvals to approach a Court is essentially an internal matter and the period spent to secure any authorisation cannot be excluded for the purpose of calculating the period of limitation as prescribed.

14. We find no infirmity with the learned Commercial Court in rejecting the appellants' application under Section 34 of the A&C Act. The present appeal is unmerited and is, accordingly, dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 27, 2024

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