

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.12074 OF 2024
IN
ARBITRATION APPEAL (L) NO.8703 OF 2024
WITH
INTERIM APPLICATION NO.12075 OF 2024
IN
ARBITRATION APPEAL (L) NO.8703 OF 2024

Executive Engineer National Highway Division	...Applicant
<u>IN THE MATTER BETWEEN</u>	
Executive Engineer National Highway Division	...Appellant
Versus	
Sanjay Shankar Surve & Ors.	..Respondents

Ms Kajal Gupta a/w. *Shweta Singh i/b. M.V. Kini & Co.,*
Advocate for Applicant/Appellant.

Ms Revati Desai i/b. *Chetan Mali, Advocate for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : FEBRUARY 5, 2025

ORAL JUDGEMENT:

Context and Background:

1. Interim Application No.12074 of 2024 is an Application seeking condonation of delay in filing of the Arbitration Appeal (L) No. 8703 of 2024 (***“Arbitration Appeal”***), filed under Section 37 of the *Arbitration and Conciliation Act, 1996* (***“Arbitration Act”***).

2. The Arbitration Appeal impugns a Judgment and Order dated April 19, 2023 passed by the District Judge-1, Ratnagiri under Section 34 of the Arbitration Act, which upheld an arbitral award enhancing the compensation amount in respect of land acquisition for construction of a national highway.

3. Ms. Kajal Gupta, Learned Counsel for the Applicant submits that the copy of the order was received on May 9, 2023 and the limitation period had expired on August 10, 2023. Learned Counsel further submits that the Appeal was e-filed on December 11, 2023, which led to an electronic filing number ending with “2023” being assigned. Learned Counsel would submit that the delay is just 123 days, whereas the Registry has wrongly stated that the delay is of 164 days. For the reasons set out in the Interim Application, she seeks condonation of delay.

Reasons Pleaded to Condone Delay:

4. The reasons set out in the Application for condonation of delay essentially make a case that the proceedings under Section 34 had been handled by a local advocate in the District Court, and due to internal procedures and multiple stakeholders being involved, the impugned judgment could not be challenged in time. The case made out in the Application is that a closer inspection of the record was conducted in June 2023 when the erroneous nature of the impugned judgment came to be realized. Consequently, the Applicant feared that if the judgment is not challenged, then it would set a precedent for all other matters and would cause hardship and “unimaginable financial loss” to the Appellant.

5. In these circumstances, it is pleaded that the present advocates were approached with the complete record of the lower Court proceedings. Transferring the papers from Ratnagiri and re-building the paper trail was difficult, it is pleaded, and consequently, the prayer for condonation of delay is said to be worthy of acceptance.

6. Ms. Revati Desai, Learned Counsel for the Respondents opposes the Application for condonation of delay on two primary grounds. *First*, she draws my attention to the fact that the impugned judgment itself records the name of advocates and the law firm that handled the matter. It is evident that it is the very same advocate that handled proceedings before the District Court who has filed the present Appeal and the Interim Application for condonation of delay. Consequently, according to Ms. Desai, the application is *per se* a mis-statement. On this ground alone, she would submit, the conduct being inequitable, the delay should not be condoned.

7. *Second*, Ms. Desai would submit, even the e-filing date of the Court records would show that the electronic filing date was March 20, 2024. Learned Counsel for the Appellant had submitted that considering that the e-filing number ends with 2023, the e-filing had indeed being done in 2023, and after certain objections were removed a stamp number was assigned on March 20, 2024. The Applicant has not tendered a copy of the electronic acknowledgement generated by the e-filing system when an e-filing is done. Normally, I would have asked the Registry to file a report as to when the appeal was actually filed. According to the Registry, the delay is crystallised at 164 days. But this facet of the matter need not detain my attention for the reasons set out below.

8. Learned Counsel for the Respondents also draws my attention to the judgment of the Supreme Court in *Mahanagar Telephone Nigam V/s. State of Maharashtra & Ors.*¹ to point out that a party that files misleading submissions when seeking condonation of delay must be non-suited since condonation of delay falls in an equity jurisdiction, and inequitable conduct would erode the credibility of the person indulging in it.

Analysis and Findings:

9. Having given my anxious consideration to the situation at hand, and having had the benefit of a review of the record with the assistance of both Counsel, and taking into account that the Appellant is a premier government organization involved in the construction of national highways (which would lead to expectation of a higher standard from the Appellant), I am of the view that the prayer for condonation of delay ought not to be granted.

10. To begin with, I am not satisfied with the explanation made out in the Interim Application. It is evident from the record that there is no change in Advocate or the law firm that handled the proceedings under Section 34 of the Arbitration Act when it came to filing the Arbitration Appeal. That being the foundation of explaining the delay, evidently, the entire Interim Application is set up on a false foundation.

11. Even assuming that this had not been the case, upon consideration of the material on record, I am not satisfied that sufficient cause has been shown. The grounds set out are flimsy and vague. It is now trite law that State agencies cannot hide behind the conventional excuse of bureaucratic delays and inefficiency in State

¹ 2013 (9) SCC 92

capacity, as an excuse to condone delays. The Supreme Court has had occasion to articulate this position in *Borse Brothers*² and in *Postmaster General*³ that when persons who are involved in the filing of appeals are well aware and conversant with the issues involved, a special treatment cannot be accorded to arms of the Government and mechanically condone delay merely because it is an arm of Government that is before Court.

12. In terms of the law declared in *Borse Brothers*, it is now clear that an appeal under Section 37 of the Arbitration Act would draw the limitation period from Article 116 of the Schedule to the *Limitation Act, 1963* (“*Limitation Act*”). Besides, this matter not being a commercial dispute, the limitation period of 90 days from Article 116 of the Schedule to the Limitation Act would apply, and to any delay after that, one would need to import the principles of Section 5 of the Limitation Act for showing sufficient cause. In Paragraph 27 of *Borse Brothers*, the Supreme Court has cautioned that the “most important principle to be applied” would be the “main object of the Arbitration Act requiring speedy resolution of disputes”. This objective would govern appeals under the Arbitration Act, the Supreme Court has ruled.

13. Now, when Parliament chose to adopt arbitration as the means for dealing with compensation disputes under Section 3G of the *National Highways Act, 1956* (“*NH Act*”), it was a conscious legislative choice to adopt the speedy dispute resolution framework of the Arbitration Act, and apply it to land acquisition cases under the NH Act. Applying the principles and the law declared in *Borse Brothers*, I am unable to condone a delay of 124 days cited in the instant case,

² *Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited* – (2021) 6 SCC 460

³ *Postmaster General v. Living Media (India) Ltd.* – (2012) 3 SCC 563

which is the period of delay after the expiry of the limitation period of 90 days.

14. That apart, the very foundation of this case being based on a demonstrably false pleading, solemnly filed in Court, there is no reason to entertain the Interim Application any further. The submission of Learned Counsel for the Applicant, that even if the name of the advocate shown in the Section 34 proceedings is the same, it took time to get the records and prepare the Arbitration Appeal. Such an argument hardly explains why a positive assertion of the advocate being different was made in the first place.

15. Learned Counsel for the Respondents submits that even in the Section 34 Petition there had been an inordinate delay of 240 days and in fact the finding in the impugned judgment and order is that there was no power to condone the delay in view of the stringent nature of the provisions of Section 34 of the Arbitration Act.

16. The upshot of the submission is that the Applicant has been habitually late, and has held up matters even in proceedings so far with inordinate delays. Be that as it may, in some sense, this facet of the matter could be regarded as a matter on merits for purposes of the Arbitration Appeal, since the Section 34 Court has ruled on limitation. In any case, I need not delve into that aspect of the matter any further.

Conclusion:

17. Not being satisfied that a case has been made out for condonation of delay, in particular, taking into account the manner of pleadings in the Interim Application for condonation of delay, and

taking an overall view of the matter, I do not think it fit to condone the delay in this case.

18. Consequently, the Interim Application No.12074 of 2024 *is dismissed*. As a result the Arbitration Appeal, along any Interim Application pending in it, also stand *dismissed*.

19. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]