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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2609 OF 2021
IN
ARBITRATION APPEAL NO. 20 OF 2022

Supriya Raju Mehta
Age : 55 Years, Occ.: Clerk
R/o. House No. 216, Pavshi Bhorbhat,
Taluka : Kudal, District : Sindhudurg.

...Applicant/Appellant

Versus

1. National Highway Authority of India
Rep. By its Executive Engineer
National Highway Division,
Opp. Collector Office,
Ratnagiri – 413 004.

2. Sub Divisional Officer cum Competent
Authority of Land Acquisition, Kudal,
District : Sindhudurg.

3. District Magistrate cum Arbitrator
Sindhudurg Collector Campus,
District : Sindhudurg.

...Respondents

**Mr. Rameshwar N. Gite a/w Mr. Sushant N. Tare and Ms. Pratiksha
Shelke for the Applicant/Appellant.**
None for the Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JULY 10, 2025

Oral Judgment:

Context and Factual Background:

1. This an Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (“***Arbitration Act***”), challenging an order dated March 30, 2021 (“***Impugned Order***”) passed by the Learned District Court,

Sindhudurg, setting aside an arbitral award dated March 20, 2018 (“**Arbitral Award**”) passed pursuant to arbitral proceedings conducted under Section 3G(5) of the National Highways Act, 1956 (“**Highways Act**”).

2. The Petitioner’s land admeasuring 0.020 Ares had been acquired by the National Highways Authority of India (“**NHAI**”) for the Mumbai-Goa Highway. The Learned District Court entertained a challenge under Section 34 of the Arbitration Act filed by NHAI, filed over two years after the passing of the Arbitral Award. The delay in filing the challenge was condoned on the premise that NHAI was a third party and unaware of the Arbitral Award. This Court had stayed the Impugned Order in these proceedings under Section 37 of the Arbitration Act, and that stay has continued till date.

3. This Petition has been lying on the docket of this court for nearly four years. On March 13, 2025, taking note of the fact that NHAI had not entered appearance despite repeated opportunities, it was made clear that on the next date, if NHAI fails to appear, the matter would be proceeded with *ex parte*. Yet, today too, none has appeared on behalf of NHAI. Therefore, this Appeal has been taken up in the absence of NHAI.

4. The core issue that falls for consideration at the threshold is whether the Learned District Court was right in condoning the delay of nearly two years in entertaining NHAI’s Appeal. The treatment of NHAI as a third party to the arbitration proceedings (and by implication, to the acquisition proceedings) would also lie at the heart of the matter.

5. The Learned Arbitral Tribunal, essentially a government officer designated for the purpose, conducts the statutory arbitration under Section 3G(5) of the Highways Act. The Learned Arbitral Tribunal reviewed the original compensation awarded by the “Competent Authority” under the Highways Act and effected corrections to the assessment of compensation. This led to some increase in the compensation as originally computed.

6. NHAI’s challenge under Section 34 of the Arbitration Act before the District Court, Sindhudurg was admittedly filed on February 4, 2020. The Arbitral Award was passed nearly two years before that on March 20, 2018.

Analysis and Findings:

7. Whether such a delay could have been condoned is to be seen. It would be useful to reproduce Section 34(3) of the Arbitration Act:

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

[Emphasis Supplied]

8. A plain reading of the foregoing would indicate that the challenge under Section 34 of the Arbitration Act must be filed within three months of receipt of the arbitral award. For any delay thereafter, if a Court is satisfied that the delay was due to sufficient cause, the Court may entertain the challenge if the application is filed within a further period of 30 days. After such 30-day period, the Court is not permitted by law to entertain the challenge. This position of law is now well declared in a range of decisions, including the decision of the Supreme Court in ***Popular Construction***¹, which has been consistently followed in subsequent judgements.

9. In the instant case, going by the date of the Arbitral Award, the three-month period for filing a challenge applicable under Section 34(3) of the Arbitration Act would have expired on June 20, 2018. Thereafter, subject to showing sufficient cause, the Section 34 Court is permitted to condone the delay for a further period not exceeding 30 days, *but not thereafter*. It is now trite law that the Section 34 Court would have no power to condone any delay beyond the aforesaid period of 30 days after the expiry of three months from the receipt of the arbitral award. In ***Popular Construction***, the Supreme Court held that the usage of the words “*but not thereafter*” in Section 34(3) of the Arbitration Act would lead to the necessary exclusion of discretion available under Section 5 of the Limitation Act, 1963 to the Court, regardless of the cause.

10. The Arbitration Act has been specially made to regulate arbitration proceedings. The entitlement to demonstrate sufficiency of

¹ *Union of India vs. Popular Construction Co* – 2001(8) SCC 470

cause for a delayed challenge to an arbitral award has been ring-fenced to an outer limit of 30 days beyond the stipulated limitation period of three months. This is an essential feature. That apart, Parliament has consciously incorporated into the Highways Act, arbitration as a statutory means to challenge awards of compensation made by the Competent Authority. This is in substitution of the conventional approach of civil courts with territorial jurisdiction over the land in question, being the forum for resolving disputes over the compensation.

11. In my opinion, this is a conscious choice to incorporate the benefits of legislative policy underlying the Arbitration Act into the dispute resolution process provided for in the Highways Act. Therefore, the objective of speedy and efficient dispute resolution outside Courts under the Arbitration Act is now necessarily the objective under the Highways Act too, where the provisions of Section 3G(5) of the Highways Act are attracted. Section 5 of the Arbitration Act provides with a *non-obstante* provision that no judicial authority shall intervene in arbitration proceedings except where provided for in Part I of the Arbitration Act. The manner of intervention provided for in Section 34 of the Arbitration Act entails the express prohibition on intervention beyond the ninetieth day following the three-month period after receipt of the arbitral award. After this period, by a conjoint reading of Section 34(3) and Section 5 of the Arbitration Act, the Section 5 Court has no jurisdiction to condone the delay in filing a challenge to an arbitral award.

12. Against this backdrop, it would be fruitful to examine the facts of this case. The Learned District Judge condoned a near-two-year delay in NHAI seeking to challenge the Arbitral Award. For doing so, the Learned District Court was pleased to treat NHAI as a “third party” to the arbitral proceedings, indicating that NHAI was unaware of the Arbitral Award. This finding, as rightly pointed out by Learned Counsel on behalf of the Petitioner, is simply untenable. Unlike any other conventional dispute between two or more parties to an arbitration agreement, arbitration in the case of Section 3G(5) of the Highways Act is a statutory arbitration. The very legislation that is administered by NHAI and which enables NHAI to acquire land, creates a deeming fiction of an arbitration agreement. The role of NHAI lies at the heart of the land acquisition process. To operationalize NHAI’s objective to acquire land, a “Competent Authority” designated specifically for the very purpose of administering acquisitions is notified. It is the Competent Authority whose decisions are subjected to challenge in the arbitration. The Competent Authority has no role without NHAI, which in fact prepares a manual of guidelines for the Competent Authorities to follow. The Competent Authority is represented in such arbitral proceedings and represents the interests of NHAI in the course of defending its original award and demonstrating that it was compliant with all applicable legal requirements in the computation of compensation.

13. Therefore, this is not a case where an unknowing third party is suddenly ambushed with knowledge that there has been a change in valuation effected in the arbitration proceedings. In fact, if NHAI were to

be treated as a third party, it would undermine the very right to challenge the arbitral award – the very locus of the party to challenge an award would come into question.

14. Be that as it may, the knowledge of the Competent Authority constitutes knowledge of NHAI. It is not open to NHAI to purport to be an unknowing third party for knowledge of the Arbitral Award being gained only after two years, after which the challenge under Section 34 of the Arbitration Act was filed. Permitting NHAI to be treated as a third party to challenge arbitral awards passed under Section 3G(5) of the Highways Act with a two-year delay would lead to a contrivance to circumvent the requirements of Section 34(3) of the Arbitration Act and render it nugatory. In every case where the deadline to challenge an award has been missed, the NHAI could simply come in purporting to be a “third party” and arbitral awards that have attained closure could be reopened. This would be totally against the fundamental policy of the law governing land acquisition under the Highways Act read with the Arbitration Act. Therefore, applying the very same principles and parameters as stipulated under Section 34 of the Arbitration Act, I have no hesitation in setting aside the District Court’s view that the delay in challenging the Arbitral Award can be condoned.

15. As stated earlier, the adoption of the framework of arbitration under the Arbitration Act is to ensure that disputes relating to land acquisition are expeditiously dealt with concluded. A period of four months is more than adequate for a decision to challenge an arbitral award under

Section 34 of the Arbitration Act, and to implement such decision. It is inexplicable that NHAI could suggest that it had no knowledge for two years and somehow rushed to Court upon eventually becoming aware of the Arbitral Award. The very foundational premise of such an approach is untenable.

16. It would be worthwhile to mention the principles of law declared by the Supreme Court in how Courts should treat requests for condonation of delay under Section 37 of the Arbitration Act (where the Court has jurisdiction to condone), although in the instant case, there is no jurisdiction to condone delay after the period of 30 additional days under Section 34(3) of the Arbitration Act has expired. In ***Borse Brothers***², a three-judge bench of the Supreme Court has analysed the march of the law in relation to sufficiency of cause for condonation of delay. ***Borse Brothers*** cites ***Popular Construction*** and specifically highlights the need for quick and speedy disposal of disputes. In Paragraph 63, taking note of the legislative objective of speedy disposal of disputes under the Arbitration Act, ***Borse Brothers*** has emphasized the view that condonation of delay is an exception and not a rule or a matter of entitlement. The delaying party's negligence, delay and laches would create gains in favour of the other party in equity and justice, which cannot be simply wished away, the Supreme Court ruled.

17. It is important to bear this principle in mind. No doubt this analysis is not directly relevant in view of the hard-coded outer deadline of

² *Govt. of Maharashtra vs. Borse Brothers* – (2021) 6 SCC 460

30 days beyond the three months after receipt of an arbitral award (under Section 34 of the Arbitration Act) but the underlying principle has to be invoked because what is directly prohibited under Section 34(3) has been achieved indirectly, by treating NHAI as a “third party” to its own land acquisition, only to allow a delayed challenge to the Arbitral Award. By doing so, the fruits of the Arbitral Award and closure to the dispute that ought to have been available to the Petitioner way back in July 2018 (four months after the Arbitral Award) have been denied for seven years.

18. In these circumstances, the Impugned Order insofar as it deals with the issue of limitation is not sustainable and is hereby quashed and set aside. Since it is held that the delay could not have been condoned it is not necessary to comment on any facet of the merits of the computation.

19. The Appeal is ***finally disposed of*** in the aforesaid terms. Interim Applications, if any, connected to the Appeal would also stand ***disposed of***.

20. Should any deposit of the amounts awarded under the Arbitral Award have already been made, the same shall be released to the Petitioner within a period of four weeks from the upload of this judgment on the website of this Court.

21. 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.]