



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAM) NO. 48 OF 2025

IN

ARBITRATION APPEAL (STAMP) NO. 1340 OF 2025

(Ordinance Factory Khamaria Jabalpur ..vs.. M/s. Nityanand Udyog Private Ltd., Nagpur and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Ashwini Athalye, Counsel for the applicant/appellant,
Mr. Sahil Dewani, Counsel for the non-applicant/respondent No.1.

CORAM : NIVEDITA P. MEHTA, J.

DATE : 25-11-2025

The applicant has filed the present application under Section 5 of the Limitation Act, seeking condonation of delay of 79 days in filing the appeal challenging the judgment dated 06-05-2024 passed in Misc. Civil Application No. 900/2018 by the learned District Judge-2, Nagpur, as well as the award dated 30-07-2018 passed by the learned Arbitrator.

2. It is the case of the applicant that the delay occurred due to *bona fide* reasons and not on account of deliberate negligence. The applicant submits that the certified copy of the impugned order was received belatedly, and further time was consumed in obtaining permission from the competent authority and securing administrative approvals for filing the appeal.

3. Per contra, learned Counsel for the non-applicant submits that, under Section 37 of the Arbitration and Conciliation Act, 1996, the Court may entertain an application only within thirty days after expiry of the prescribed statutory

period of three months, subject to demonstration of sufficient cause by the applicant. It is further contended that since the impugned order was passed by a Commercial Court and the dispute is commercial in nature, statutory timelines are required to be strictly adhered to.

4. The Hon'ble Apex Court in ***Petition for Special Leave to Appeal (c) No. 9580/2025, Jharkhand Urja Utpadan Nigam Ltd. & another v. M/s. Bharat Heavy Electricals Limited***, held thus:

“20. The High Court, thereafter, proceeded to answer the aforesaid question as under:

“19. In order to answer this question, we cannot lose sight of the whole purpose of enactment of the Commercial Courts Act, 2015 i.e., to provide for speedy disposal of high value commercial dispute.

20. No doubt there was a similar provision in Haryana Consumer Protection Rules, 1988 framed under the Consumer Protection Act, 1986 which was considered by the Supreme Court in the case of Housing Board, Haryana (1 supra).

The said provision in the Haryana Consumer Protection Rules, 1988 also provided for communication of the order of the District forum to the parties free of charge in order to avoid the delay as well as to save the parties from the burden of expenses that may be incurred for obtaining the certified copy.

The Supreme Court held that the scheme of the Consumer Protection Act was to provide for better protection of the interest of the consumers as a measure for economical and speedy remedy for the settlement of the dispute and the matters connected therewith and therefore, the said rule should be understood in a manner so that it would protect the interest of the parties before the District forum by making it obligatory on the District forum to provide a copy of the order duly signed and dated by the members of the Bench; and the period of limitation prescribed with

regard to filing of an appeal under Section 15 of the said Act therefore, has to be computed as commencing from the date of communication of the order in the manner laid down in the rules.

It was in that context that it was Held that mere pronouncement of an order in the open Court would not be enough, but under the scheme of the rules copy of the said judgment has to be communicated to the parties affected by the said order so that the parties adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or before the higher forums. In absence of such communication of signed and dated order, it was held that the parties adversely affected by it will have no means of knowing the contents of the order so to challenge the same and get it set aside by the appellate authority or by the higher forums.”

5. In ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer) v. Borse Brothers Engineers and Contractors Private Limited, (2021) 6 SCC 460***, the Hon’ble Apex Court held as follows -

“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.,[“Postmaster General”], as follows:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely

because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

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(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. 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.

64. *Coming to the facts of the appeals before us, in the Civil Appeal arising out of SLP (C) No. 665 of 2021, the impugned judgment of the High Court of Bombay, dated 17.12.2020, has found that the Govt of Maharashtra had not approached the court bona fide, as follows:*

“7. I have carefully gone through the papers. There can be no doubt in view of the documentary evidence in the form of copy of the application tendered by the Advocate representing the applicant for obtaining a certified copy (Exhibit-R1) that in fact, after pronouncement of the judgment and order in the proceeding under Section 34 of the Act, the concerned Advocate had applied for certified copy on 14.05.2019. The endorsement further reads that it was to be handed over to Mr. A.D. Patil of the Irrigation Department, Dhule, who is a staff from the office of the applicant. The further endorsements also clearly show that the certified copy was ready and was to be delivered on 27.05.2019. In spite of such a stand and document, the applicant has not controverted this or has not come up with any other stand touching this aspect. It is therefore apparent that the applicant is not coming to the Court with clean hands even while seeking the discretionary relief of condonation of delay”

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(1-A) 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.*

66. *In the Civil Appeal arising out of SLP (C) No. 15278 of 2020, the impugned judgment of the High Court of Madhya Pradesh dated 27.01.2020 relies upon Consolidated Engg. and thereby states that the judgment*

of this Court in N.V. International would not apply. The judgment of the High Court is wholly incorrect inasmuch as Consolidated Engg. was a judgment which applied the provisions of section 14 of the Limitation Act and had nothing to do with the application of section 5 of the Limitation Act. N.V. International was a direct judgment which applied the provisions of section 5 of the Limitation Act and then held that no condonation of delay could take place beyond 120 days. The High Court was bound to follow N.V. International, as on the date of the judgment of the High Court, N.V. International was a judgment of two learned judges of the Supreme Court binding upon the High Court by virtue of Article 141 of the Constitution. On this score, the impugned judgment of the High Court deserves to be set aside.

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."

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.*

69. *In the Civil Appeal arising out of SLP (C) Diary No. 18079 of 2020, there is a huge delay of 227 days in filing the appeal, and a 200-day delay in refiling. The facts of this case also show that there was no sufficient cause whatsoever to condone such a long delay. The impugned judgment of the High Court of Delhi dated 15.10.2019 cannot be faulted on this score and this appeal is consequently dismissed.”*

6. Upon considering the aforementioned authorities and the submissions of learned Counsel for the respective parties, this Court is of the view that the applicant has failed to demonstrate any sufficient or compelling cause to justify the delay. A perusal of the application does not disclose any circumstance that reasonably prevented the applicant from filing the appeal within the prescribed period.

7. Consequently, the application seeking condonation of delay is rejected. However, in the interest of justice, the executing Court is directed to expedite the execution proceedings and dispose of the same within a period of three months from the date of receipt of this order.

(NIVEDITA P. MEHTA, J.)