

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAM) NO. 36 OF 2024
IN
ARBITRATION APPEAL STAMP NO. 19276 OF 2023
ARBITRATION APPEAL NO. 16 OF 2024

Mahadeo Amber Chaunarkar Vs. National Highway Authority of India and others

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

Court's or Judge's orders

Shri T.T. Mirza, Advocate h/f Shri A.M. Quazi, Advocate with Shri Y.R. Zalte, Advocate for applicant
Shri S.C. Joshi, AGP for respondent/State
Shri Ramesh Darda, Advocate for respondent No.2

CORAM : SMT M.S. JAWALKAR, J.

DATE : 21.04.2025

Present application is filed for condonation of delay in filing appeal.

2. The application is vehemently opposed by the learned Counsel for respondents. He relied on citation *Government of Maharashtra (Water Resources Department) Vs. M/S Borse Brothers Engineers and Contractors Pvt. Ltd, AIR OnLine 2021 SC 152*. In support of his contention that even after sufficient cause has been shown, the party is not entitled for condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act.

3. Learned Counsel for petitioner submitted that in fact, there is no delay, the judgment is passed on 09/01/2023, in Arbitration Case No. 60/2020, by the District Judge-9,

Nagpur. The copy of judgment was received on 06/02/2023. Thereafter, after the receipt of copy, Counsel for the applicant contacted the applicant for seeking instructions. In March, 2023, appeal was drafted by his Counsel and was ready to sign in the second week of April, 2023. Thereafter, applicant submitted appeal memo along with relevant documents. However, clerk of the Counsel failed to upload appeal memo along with relevant documents. In the first week of March, 2023, it came to the knowledge of the Counsel that the said record is lying idle. The appeal ought to have been filed before 09/04/2023. However, it appears that there is delay of 31 days. The delay is not deliberate or intentional, however, it appears that in arbitration proceeding there is importance of time and therefore specific time line is given under the Act for filing appeal. As there was no intentional delay, however, the applicant as well as his Counsel has not shown any due diligence. As such, though I am allowing the application for condonation of delay, it would be subject to cost of Rs.3000/-, to be paid to the respondent No.1, National Highway Authority of India, within three weeks.

4. Registry is directed to register appeal, after verifying that amount of cost deposited to the respondent, National Highway Authority of India, as per direction and then register the appeal.

(SMT M.S. JAWALKAR, J.)