2026:AHC:207864

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 159 of 2026

Vasudev (Deceased) and 22 others

.....Appellant(s)

Versus

National Highway Authority of India through Project Director

.....Respondent(s)

Counsel for Appellant(s)	:	Akhilesh Chandra Shukla
Counsel for Respondent(s)	:	Vaibhav Tripathi

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

In Re: Delay Condonation Application No.2 of 2026

1. The present appeal purported to be under Section 37 of the Arbitration and Conciliation Act, 1996, (in short Act 1996), has been preferred along with the delay condonation application supported by affidavit for condoning the delay in preferring the appeal, questioning the judgement and decree dated 09.09.2022 passed by the Additional District and Sessions Judge / Fast Track Court No.1, Baghpat in Arbitration Case No. 279 of 2017, *Shiv Narayan (deceased) and others Vs. National Highway Authority of India* whereby the objection under Section 34 of the 1996 Act preferred against the award dated 02.09.2016 of the Arbitrator / Collector, Baghpat in Arbitration Case No. 69 of 2008 under Section 3G(5) of the National Highway Act, 1956 came to be rejected.

2. As per the pleading set out in the delay condonation application supported by affidavit, it has been contended that an award came to be passed by the Arbitrator / Collector, Baghpat on 02.09.2016 in Arbitration Case No. 69 of 2008 / 2009 under Section 3G(5) of the National Highway Act, 1956 against which, an objection came to be preferred under Section 34 of the Act 1996 before the Additional District and Sessions Judge / Fast Track Court No. 1, Baghpat in Arbitration Case No. 279 of 2017, *Shiv Narayan (deceased) and others Vs. National Highway Authority of India* under Section 34 of the Arbitration and Conciliation Act, 1996 which came to be rejected on 09.09.2022. Though the appeal was to be

filed before this Court under Section 37 of the Act, 1996 promptly. However, delay occurred because there was a plot no. 252 mistakingly mentioned in the application in place of plot no. 202 for which a correction application was filed, which was allowed on 09.12.2023. Post passing of the order dated 09.12.2023 allowing the correction application, the counsel for the applicant did not inform the appellants that the correction application had been allowed, therefore the appellants had no knowledge about the order dated 09.12.2023 and the appellants gathered knowledge about the order dated 09.12.2023 in the last week of October, 2025 when the counsel for the appellants asked the appellants to pay more Court fees and thereafter, he uttered that the case has been decided and the correction application also stands decided. Thereafter appellants had demanded certified copy of the order dated 09.09.2022 and 09.12.2023 which was handed over to the appellants on 30.09.2025. After getting the copy of the orders, the appellants took a decision to challenge the aforesaid orders and one month time stood consumed to go to Prayagraj to file the present appeal and thereafter, the appellants engaged the deponent, who has sworn the delay condonation application, who went to Prayagraj to file the present appeal and to do pairvi in the matter and then he came to Prayagraj on 08.11.2025 and handed over the documents to the counsel, who has filed the appeal and after pursuing the documents, proof of the death certificate of some parties, was asked for which was arranged in the month of June, 2026 and thereafter the present appeal came to be filed, thus there is no deliberate delay in filing the present appeal.

3. The extract of the delay condonation application is quoted hereunder:-

"*1. That the deponent is an advocate and appellant no.12 and Hindu by Religion being same cause of action and aggrieved by same orders doing. pairavi on behalf of other appellants in this appeal and is as such he is acquainted with facts and circumstances of the case the deposed to below.*

2. That, the present appeal has been filed challenging the Judgment and Decree dated 09.09.20222 passed by Additional District and Session Judge/ Fast Track Court No.1 Baghpat, in Arbitration Case No.279 of 2017 (Shiv Narayan (Deceased) and others Vs National Highway Authority) u/s 34 of Arbitration and Conciliation Act 1996 and modify the order dated 02.09.2016 passed by Arbitrator/ Collector Baghpat in arbitration case no. 69 of 2008 and 2009 u/s 3G (5) of National Highway Act 1956

and increase the compensation of the appellants as per provision of 2013 Act.

3. That, there is delay in filing the present appeal because the order was passed on 09.09.2022. Delay occurred because there was plot no. 252 was mistakenly mentioned in application place of 202 for which application was filed and correction in correction application was allowed on 09.12.2023.

4. That, after passing of the order dated 09.12.2023 counsel of the appellants have not informed the appellants that matter has been decided therefore appellants have no knowledge about the correction order. The appellants got knowledge about the order dated 09.12.2023 in last week of October 2025 when counsel has asked the appellants to pay more fees than he said that case has been decided and correction application is also decided.

5. That, thereafter appellants have demanded certified copy of the orders dated 09.09.2022 and to the 09.12.2023 which was given appellants on 30.09.2025. Getting copy of the orders, appellants gathered and make plan to challenge the aforesaid orders then one month taken to collect money to go Prayagraj to file present appeal.

6. That, thereafter, all appellants have engaged deponent to went Prayagraj to file present appeal and to do pairavi in the matter then he came to Prayagraj on 08.11.2025 and handed over the documents to present counsel. After perusing the documents demanded proof of death of some parties who were died during pendency of arbitration application. Then proof could be arranged in month of June 2026.

7. That, in January some more documents required by counsel including certified copy of the order dated 02.09.2016 passed by Arbitrator. But till date certified copy of the order dated 02.09.2016 could not find therefore the present appeal has now been filed with exemption application. Therefore, no deliberate delay but occurred in collection of documents which is genuine. Therefore, delay may be condoned by this Hon'ble court.

8. That the delay is genuine and not deliberately therefore the same may be Condoned by this Hon'ble court if any.

9. That, under the facts and circumstances referred hereinabove it is expedient in the interest of justice that this Hon'ble' Court may graciously be pleased to allow this delay condonation application and hear the matter on merit, otherwise the appellant shall suffer irreparable loss and injury SO that the justice may be done."

4. It is thus prayed that the delay in filing the appeal be condoned and the appeal be heard on merits as there were circumstances beyond the control and the comprehension of the appellants and in case the delay is not condoned and the appeal is not heard on merits then the appellants shall

suffer irreparable loss and injury which cannot be compensated in any manner whatsoever.

5. Per contra, Sri Tripathi, who appears for the opposite party has submitted that none of the contentions raised by the counsel for the appellants has any legs to stand. According to him, the delay in filing the appeal is of 1322 days and the reasons set forth are nothing but an excuse and such type of grounds for condonation of delay are not liable to be accepted.

6. I have heard the submissions so made across the Bar and perused the record.

7. Record reveals that the award came to be passed by the Arbitrator / Collector, Baghpat in Arbitration Case No. 69 of 2008 / 2009 under Section 3G(5) of the National Highway Act, 1956 on 02.09.2016, against which objection under Section 34 of the 1996 Act came to be preferred, which was rejected on 09.09.2022.

8. Questioning the award dated 02.09.2016 passed by the Arbitrator / Collector, Baghpat, objection under Section 34 of the 1996 Act came to be preferred, which was registered as Arbitration Case No. 279 of 2017, which was rejected on 09.09.2022 by the Court of Additional District and Sessions Judge / Fast Track Court No. 1, Baghpat.

9. As per the averments contained in the affidavit in support of the delay condonation application, a correction application came to be preferred for correcting the plot number while substituting 252 to 202, which was allowed on 09.12.2023. However, the appeal came to be presented before the office of this Court on 14.09.2026 and the same is beyond time to the tune of 1322 days.

10. A bare look of the explanation set forth, setting out the reasons for delay, terming it to be a situation beyond control and comprehension, cannot be accepted / endorsed, particularly when it is not a case wherein the appellants were not aware about the factum of passing of the order dated 09.09.2022. Even a correction application also came to be preferred, which was allowed as per the own saying of the appellants on 09.12.2023.

11. Interestingly, the deponent of the affidavit in support of the delay condonation application happens to be an Advocate. Meaning thereby, being an Advocate, he is supposed to be aware about the statutory timeline and also law and ignorance of law cannot be pleaded as an excuse. There is nothing on record to suggest, even otherwise by way of any documentary evidence or correspondence, that the appellants could know about the order passed on 09.12.2023 deciding the correction application in the month of October, 2025. Apart from the same, though the allegation has been leveled upon the lawyer / the Advocate, who was conducting the proceedings on behalf of the appellants before the Court below, but nothing has been brought on record to show that any action was taken against this Advocate / lawyer for not informing about the allowing of the correction application on 09.12.2023. The delay cannot be condoned on mere asking, as there has to be a ground, which should depict that the delay in filing the appeal is unintentional and beyond control. The issue is no more *res integra* as the Hon'ble Apex Court in ***Government of Maharashtra (Water Resources Department) v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.***, **AIR Online 2021 SC 152** had observed as under:-

"*61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial 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(1A) 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.*"

12. Since, the grounds taken for condonation of delay are not tenable in the eyes of law coupled with the fact that this Court does not find the case to be a fit case for according interference, thus, the delay condonation application for condoning the delay in filing the appeal is **rejected**.

<u>Order on Appeal</u>

Since by a separate order passed, delay condonation application has been rejected, consequently the appeal stands **dismissed**.

(Vikas Budhwar,J.)

October 5, 2026
N.S.Rathour

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad