

GAHC010196982025



2026:GAU-AS:7511

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Arb.A./3/2025

1. Union of India,
Represented By The Commander Works
Engineer (AF) Borjhar,
P.O. Airport, Borjhar, Guwahati, Assam,
Pin-781015.
2. Garrison Engineer (Air Force),
Tezpur, P.O.-Salonibari,
P.S. Tezpur,
District-Sonitpur (Assam), 784104.

.....Appellants

-Versus-

1. Smti Krishna Devi@ Sabitri Devi,
S/o- Late Sukhram Dhiman,
C/o, Ghanshyam Das Dhiman,
M/s SR Engineering Construction,
Vill.-Haleswar,
P.O.- Haleswar,
P.S. Tezpur,
District-Sonitpur (Assam), 784104.

.....Respondent

For Appellants

Ms. A. Gayan, Advocate.

For Respondent

Mr. S. Ali, Advocate.

Date of Hearing : **19.05.2026.**
Date of Judgment : **29.05.2026.**

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT AND ORDER

- [1]** Heard Ms. A. Gayan, the learned Central Government Counsel for the appellants. Also heard Mr. S. Ali, learned counsel for the sole respondent.
- [2]** This appeal under Section 39 of the Arbitration Act, 1940 has been filed by the appellants, impugning the order dated 23.06.2025, passed by the court of learned Civil Judge (Senior Division), Sonitpur, Tezpur, in Misc.(Arb)Case No. 04/2025, whereby the application filed by the Union of India under Section 30 of the Arbitration Act, 1940 was dismissed on being barred by limitation.
- [3]** The facts relevant for consideration of the instant appeal, in brief, are that the husband of the present respondent was the sole proprietor of M/S SR Engineering Construction, which had secured a work order bearing CA No. CWE/TEZ/08 in 1987-88 from the present appellants. The work order was governed by the general condition of contract of which clause 70 contained an arbitration clause. The agreement involved the firm constructing Permanent Armament Section at Tezpur. The firm completed the work and raised the bill for the same on

18.01.1993. However, the present appellants did not make payment against the work done by the contractor. As such, the respondent was compelled to request for arbitration to resolve a dispute. For the said purpose, the respondent also approached Delhi High Court seeking appointment of an arbitrator, however, the said application was dismissed due to lack of territorial jurisdiction. Ultimately, on 26.08.2019, the learned District Judge, Sonitpur, appointed an arbitrator under Section 20 of the Arbitration Act, 1940.

- [4]** It is pertinent to mention herein that the husband of the present appellant expired during the course of arbitral proceedings and the present respondent represented him as his legal heirs in the said proceeding. Finally, the arbitrator after hearing both the sides made an award on 31.05.2022, in favour of the present respondent and the present appellants were directed to pay a sum of Rs. 1,33,47,268.92/- with an interest at the rate of 9% per annum till realization.
- [5]** It is further pertinent to mention herein that despite the culmination of arbitration proceedings, the arbitral award could not be published as the present appellants did not clear the dues towards arbitration fees. It was only when the present respondent approached the court of the learned District Judge, Sonitpur, by filing an application under Section 38 of the Arbitration Act, 1940 seeking a direction to the present appellants to clear its part of the arbitration fees, the learned District Judge, Sonitpur, by order dated 21.09.2022,

directed the respondent to clear the dues amounting to Rs. 47,212.33/-. It was also directed by the learned District Judge, Sonitpur that on clearance of the dues, a copy of the award shall be furnished to both the parties.

[6] It also appears that in pursuant to the direction of the order dated 21.09.2022, the present appellants did not clear the balance share of arbitrator's fees nor did they collect the award by the date mentioned in the order. It is only on 18.11.2022, they deposited a cheque towards balance payment of the fee of arbitrator.

[7] On 10.11.2022, the present respondent filed an application under Section 17 of the Arbitration Act, 1940 before the court of the learned District Judge, Sonitpur for pronouncement of judgment according to the arbitral award. On the basis of aforesaid application, Misc.(J) Case No. 61/2022 was registered, however, by its order dated 23.11.2022, passed in the said case, the learned District Judge, Sonitpur dismissed the application filed by the present respondent holding it to be filed before expiry of the period of limitation for filing objection against the award. According to the court of learned District Judge, Sonitpur, the limitation for filing objection against the award begin only on 18.11.2022, when the formal notice of the award was received by the present appellants. It held that as the application under Section 17 was filed by the present respondent on 10.11.2020, it was filed prematurely

when the 30 days period of limitation, for filing objection against the award was still running.

[8] Being aggrieved with the finding of the learned District Judge, Sonitpur the present respondent approached this court by filing a civil revision petition which was registered as Civil Revision Petition No. 138/2022. This court, by its order dated 27.03.2024, upheld the order of the learned District Judge and held that the respondent had filed application under Section 17 of the Arbitration Act, 1940 prematurely before expiry of the period of limitation for filing objection against the arbitral award.

[9] Being aggrieved by the judgment of this court, passed in the Civil Revision Petition No. 138/2022, the present respondent approached the Apex Court and filed a special leave petition challenging the finding of this court. The said petition was registered as Civil Appeal No. 47/2025, arising out of SLP(C)No. 10621/2024.

[10] By judgment dated 3rd January, 2025, passed by the Supreme Court of India, in Civil Appeal No. 47/2025, the order dated 27.03.2024, passed by this court in Civil Revision Petition No. 138/2022 was set aside and the appeal preferred by the present respondent was allowed. While allowing the appeal, the Apex Court held that the present appellants were sufficiently made aware about the award's filing on 21.09.2022, therefore, the 30 days period for filing objection against the award under Section 30 of the Arbitration Act,

1940 expired on 20.10.2022. While disposing of the aforesaid appeal, the Apex Court also directed the learned District Judge, Sonitpur to take up and dispose of the Misc.(J) Case No. 61/2022, as expeditiously as possible, preferably within a period of 5 months from the date of the judgment passed by the Apex Court.

[11] Thereafter, the Union of India, i.e., the present appellants filed an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 56 days in filing the objection under Section 30 of the Arbitration Act, 1940. It is pertinent to mention herein that the application under Section 30 of the Arbitration Act, 1940 was filed by the present appellants' way back on 18.11.2022. However, the delay condonation application for the same was filed in the year 2025 only. On the basis of the aforesaid application filed by the present appellants, the Misc.(J) Case No. 58/2025 was registered.

[12] However, by order dated 23.06.2025, passed in Misc.(J) Case No. 58/2025, the court of the learned Civil Judge (Senior Division), Sonitpur, declined to condone the delay in filing the application under Section 30 of the Arbitration Act, 1940 holding that the present appellants had failed to show sufficient cause for the delay in filing the application under Section 30 of the Arbitration Act, 1940. Accordingly, the Misc.(Arb)Case No. 04/2025, was found barred by limitation and by order dated 23.06.2025, the said Misc.(Arb)Case No.

04/2025 was also disposed of. The aforesaid order has been impugned in this appeal.

[13] Ms. A. Gayan, the learned Central Government Counsel has submitted that the trial court while dismissing the delay condonation application filed by the present appellants as well as dismissing the Misc.(Arb)Case No. 04/2025 has erred in not taking into consideration that the present appellants came to know about the award only when it received the notice on 18.11.2022, and accordingly, it file its objection within 30 days therefrom.

[14] She submits that the impression that the date of knowledge about the award will start from 18.11.2022 was also approved initially by the court of the learned District Judge, Sonitpur in its order dated 23.11.2022. She submits that even the High Court was also of the view that the period of limitation would start only after lapse of 30 days from 18.11.2022. She submits that when two courts of law have held the said view, the present appellants, who are litigants only, are not supposed to know about the nitty-gritty of law and as such, the delay occurred in filing of the objection under Section 30 of the Arbitration Act, 1940 was not intentional, neither it was due to any negligence for laches on the part of the present appellants.

[15] She submits that at it was only when the present respondent approached the Apex Court, it was held that the limitation will start from 21.09.2022. The appellants immediately

approached the court of the learned District Judge, Sonitpur by filing an application for condonation of delay.

[16] She submits that cause of the delay in the instant case was the wrong understanding about the law as the present appellants were under impression that limitation will start only after service of the notice upon the present appellants on 18.11.2022, and not prior to that and same view was also upheld by two courts.

[17] She submits that in the objection filed by the present appellants under Section 30 of the Arbitration Act, 1940, the appellants have raised serious questions as regards jurisdiction of the arbitral Tribunal to conduct the arbitration, as well as the pleas like the arbitration was not conducted as per the terms of the agreement which was entered into between the husband of the present respondent and the appellants.

[18] She submits that the Misc.(Arb)Case No. 04/2025 is required to be considered on merit, however, it was simply disposed of on finding the same being barred by limitation. She, therefore, submits that the order dated 23.06.2025, passed in Misc.(J) Case No. 58/2025, whereby the trial court refused to condone the delay of 58 days in filing the connected application under Section 30 of the Arbitration Act, 1940 is required to be interfered with by setting aside the same and thereafter, setting aside the order dated 23.06.2025, passed in Misc.(Arb)Case No. 04/2025. She also submits that,

accordingly, the order dated 26.06.2025, passed in Misc.(J)Case No. 14/2025 is also required to be set aside. She prays for directing the trial court to consider the Misc.(J)Case No. 14/2025 afresh after taking into consideration the objection filed by the present appellants under Section 30 of the Arbitration Act, 1940.

[19] In support of her submissions, the learned counsel for the appellants has cited following rulings of the Apex Court in the case of "*Mool Chandra Vs. Union of India*" reported in "*(2024 INSC 577)*" and *M/S Essar Constructions Vs. N.P. Rama Krishan Reddy*" reported in "*AIR Online 2000 SC 553*".

[20] On the other hand, Mr. S. Ali, the learned counsel for the respondent has vehemently opposed the prayer made by the learned counsel for the appellants. He submits that the appellants i.e., the Union of India, having a robust legal team, cannot take the plea of ignorance of law and after the judgment of the Apex Court in the Civil Appeal No. 47/2025, it cannot take a plea that it was under wrong impression that the limitation will start from 18.11.2022.

[21] He further submits that, in the instant case, the question as to when the limitation for filing objection under Section 30 of the Arbitration Act, 1940 will start has been laid to rest by the Apex Court in its judgment dated 03.01.2025, wherein, it has categorically held that the present appellants were sufficiently aware of the fact of filing of the award on 21.09.2022. He further submits that the Apex Court has categorically held that

the period of 30 days of limitation for filing application under Section 30 of the Arbitration Act, 1940 expired on 20.10.2022. He also submits that since the application under Section 30 of the Arbitration Act, 1940 has been filed by the present appellants much beyond the period of limitation as clarified by the Apex Court, the trial court has rightly dismissed the Misc.(J) Case No. 58/2025.

- [22]** The learned counsel for the respondent further submits that since the objection filed by the present appellants under Section 30 of the Arbitration Act, 1940 was initially not accompanied by any application under Section 5 of the Limitation Act, 1963 seeking condonation of any delay and since same was done only after a clarification to that effect came from the Apex Court, it was incumbent on the part of the present appellants to seek leave from the Apex Court for belated filing of such an application for condonation of delay, which has not been done by the present appellants.
- [23]** The learned counsel for the respondent submits that apart from pleading that the present appellants, i.e. the Union of India was under wrong impression about the date of notice and about the period from which the limitation will run, no other ground has been stated by the appellants in their application for condonation of delay as well as in the instant appeal justifying the belated filing of objection under Section 30 of the Arbitration Act, 1940.

[24] The learned counsel for the respondent submits that the Apex Court in the case of "*Union of India Vs. Vidarbha Veneer Industries*" reported in "*1994 Supp 2 SCC 696*" has also made observation that in most of the cases filed by the Union of India before the Apex Court which were barred by limitation, the applications for condonation of delay are often made in a casual and routine manner without indicating the facts which would constitute sufficient cause to permit condonation of delay in accordance with law. He submits that in the instant case also, no facts were indicated which would constitute sufficient cause to permit condonation of delay, apart from pleading that the appellants were under wrong impression regarding the period of limitation. He, therefore, submits that the trial court has correctly dismissed the prayer for condonation of delay. The learned counsel for the respondent has also cited rulings of the Apex Court in the case of "*Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Anr.*" reported in "*(1999) 2 SCC 400*" in support of his submissions.

[25] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[26] On perusal of the materials on record, it appears that in the instant case, the Supreme Court of India, in its judgment

dated 03.01.2025, passed in Civil Appeal No. 47/2025, has very categorically held that the present appellants were made sufficiently aware about the award's filing on 21.09.2022. It has also very categorically held that "*the court directing the respondents, (present appellants) to clear the fees was a clear intimation about its filing. Holding otherwise would not only be departing from precedent of this court, but also allowing the respondents, (present appellants), to take advantage of their own inaction.*" It further clarified that the limitation is to be treated as expired on 20.10.2022.

[27] Once the Supreme Court of India has clarified that the limitation for filing objection under Section 30 of the Arbitration Act, 1940, by the present appellants, in the instant case, had expired on 20.10.2022, no further question as regards the date since when the period of limitation starts may be raised by any party and it has to be accepted that the limitation has expired on 20.10.2022.

[28] The present appellants had filed the objection under Section 30 before the trial court on 16.12.2022, which was not accompanied by any application for condonation of delay. Neither it took leave from the Apex Court for filing delay condonation application after about two years of filing the application under Section 30 of the aforesaid Act before the trial court.

[29] Be that as it may, the appellants were required, in their delay condonation application, to show sufficient cause of delay

after 20.10.2022, till the filing of the application on 16.12.2022. However, it appears that in the delay condonation application, as well as in the memo of appeal in the instant appeal, the said delay has not been explained, apart from pleading that the appellants were under wrong impression about the fact as to, when the period of limitation expires. Hence, this court finds no infirmity in the trial court's order dated 23.06.2025, passed in Misc.(J) Case No. 58/2025, where it has observed that the present appellants, apart from recounting the timeline of the events from the date of award to the pronouncement of judgment by the Apex Court, has not shown any other cause for belated filing of the application under Section 30 of the Arbitration Act, 1940. The submission of the learned counsel for the appellants that the appellants came to know about the award only on 18.11.2022 cannot be accepted once the Apex Court has categorically held that the filing of awards was within appellants' notice on 21.09.2022 itself, therefore, the period of limitation starts from 21.09.2022 and it expired on 20.10.2022.

- [30]** This court is of considered opinion that, while considering an application under Section 5 of the Limitation Act, 1963, the courts have much discretion and may take a liberal view of the matter in those cases where sufficient cause for delay in filing an appeal or application has been explained. However, it also has to consider that the expiry of the prescribed period of limitation for preferring an appeal give rise to a right in favour of the award holder to take the award as binding between the

parties. After expiry of the period of limitation, the award holder gets a benefit under the law of limitation to treat the award beyond challenge. This legal right which has accrued to the award holder by lapse of time should not be lightly disturbed [see the Apex Courts ruling in ***Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Anr.***(supra)], the delay can only be condoned by the trial court, if sufficient cause for the delay has been shown. However, in absence of such sufficient cause, the delay is inexcusable.

[31] In the instant case, the trial court has rightly held in its order dated 23.06.2025, passed in Misc.(J) Case No. 58/2025 that the appellants after coming to know about the filing of the award had failed to narrate the facts which prevented them from approaching the court within the prescribed period of limitation. The repeated pleas by the appellants that they came to know about the award only on 18.11.2022 is not acceptable after the Supreme Court of India has categorically held that the appellants' notice about the award is to be taken from 21.09.2022.

[32] The submission of the learned Central Government Counsel that since high stakes are involved in this case, the delay may be condoned is also not acceptable in absence of sufficient cause for condoning the delay. The fact that in spite of being the holder of the award, the respondent is deprived of its fruit is also relevant in not casually condoning the delay caused by the appellants in preferring the appeal under Section 30 of the

Arbitration Act, 1940 without showing any sufficient cause for the same.

[33] In view of the discussions made in the foregoing paragraphs and reasons stated above, this court finds this appeal devoid of any merit.

[34] This appeal is, accordingly, dismissed.

JUDGE

Comparing Assistant