



IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

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FMAT(ARBAWARD)/7/2024
IA No.CAN/1/2024, CAN/2/2024

The Executive Engineer, SVPSD, APWD

Vs.

M/s Surendra Infrastructure Pvt. Ltd.

Mr. Shatadru Chakraborty, Sr. Adv.

Mr. Rakesh Kumar

Mr. Dibesh Dwivedi ... for the appellant

Mr. Tapan Kumar Das ... for the respondent

February 20, 2025
[SR]
Item No.1

Re:CAN/1/2024 (Condonation of delay)

1. This is an application for condonation of delay in filing an appeal under section 37 of the Arbitration and Conciliation Act, 1996 (in short "Arbitration Act"). The note of the Registry, as it appears from the condonation application, shows there has been a delay for about **183 days**.

2. Facts, in nutshell, are that an arbitration award for a sum of Rs.1,00,25,327/- was passed in favour of the respondent. The appellant being the award debtor had applied before the jurisdictional civil court praying for setting aside of the said award under section 34 of the Arbitration Act.

3. To obtain a stay of execution proceeding, so that the award cannot be executed, the appellant award debtor deposited a sum equivalent to 75 per cent of the awarded sum before the jurisdictional civil court. The respondent award holder then applied before the jurisdictional civil court for withdrawal of the said deposited sum equivalent to 75 per cent of the awarded sum and pursuant to the diction of the jurisdictional



civil court, the respondent award holder furnished a bank guarantee of the equivalent sum and ultimately got the deposit released in its favour. Therefore, today, the situation is that the respondent award debtor has received the 75 per cent of the awarded sum against submission of equivalent bank guarantee.

4. Finally, section 34 application was dismissed on merit by the jurisdictional civil court by its order dated **February 27, 2024**. Being aggrieved by the said order dated February 27, 2024 dismissing the said section 34 application, the appellant award debtor has filed the instant appeal.

5. Mr. Shatadru Chakraborty, learned senior advocate appearing for the appellant award debtor submits that for the first time on September 05, 2024 when the execution proceeding was taken up for consideration filed by the respondent before the jurisdictional civil court, the appellant came to know about the order of dismissal of its section 34 application dated February 27, 2024.

6. In support of its contention, learned senior counsel for the appellant relies upon the order of executing court dated September 05, 2024 **at page 18 and 19** to the affidavit-in-opposition filed by the respondent herein. He has further placed reference upon the averments made in paragraph 4 in the condonation application and submits that only on September 10, 2024, the appellant department was informed by the learned government panel counsel that on February 27, 2024, the judgment was passed dismissing the section 34 application.

7. Mr. Shatadru Chakraborty has further relied upon the application for stay of execution proceeding filed by the



appellant before the jurisdictional civil court **Annexure R-2 at page 15** to the affidavit-in-opposition. Relying upon the averment made and specifically referring to paragraph 3 thereto, Mr.Chakraborty submits that even on the date of filing of the application, the appellants were not aware of the order dated February 27, 2024 dismissing the section 34 application. The averment made in paragraph 4 of the instant condonation application is also in sync therewith.

8. Learned senior counsel Mr. Shatadru Chakraborty submits that the law is well settled that while adjudicating an application for condonation of delay, what is to be looked into primarily is the conduct of the applicant. Whether the applicant has acted bonafide and with due diligence. It is also settled that if there is any laches on the part of the learned advocate engaged by the applicant in communicating the relevant fact which reckons the limitation of a proceeding and if such information has reached in a delayed period of time to the applicant, the benefit should be given to the applicant because the applicant has appointed his learned lawyer with all diligence and has proceeded with the proceeding with utmost expedience and diligence.

9. *Per contra* Mr. Tapan Kumar Das, learned counsel appearing for the respondent award holder referring to the averments made in the condonation application submits that no specific case has been made out by the appellant explaining day to day delay took place for not preferring the appeal within the period of limitation.



10. He further refers to the averments made in paragraphs 5, 6 and 17 from the affidavit-in-opposition and submits that, at all material time under every stage of the proceeding, the appellant was duly represented before the jurisdictional civil court and the appellant was aware of the order dated February 27, 2024 on the same day when the section 34 application was dismissed.

11. Learned counsel appearing for the respondent further submits that, in absence of day to day explanation in the application for condonation of delay, the explanations sought to be offered are not to be accepted by this Court. He further submits that the Court should not adopt a mechanical approach in condoning the delay in filing the instant appeal.

12. He submits that the appellant award debtor being a government wing should not be treated as a privileged litigant and should be treated as an ordinary one when they are before the Court of law and therefore, the rigor of the limitation act shall apply upon the appellant with its full effect and force.

13. In support, Mr. Das has relied upon the following two decisions of the Hon'ble Apex Court :-

(a) In the matter of: State of Madhya Pradesh vs. Ramkumar Choudhary dated November 29, 2024 rendered in Special Leave Petition (Civil) Diary No.48636 of 2024. and

(b) In the matter of: Government of Maharashtra vs. M/s Borse Brothers Engineers Contractors Pvt. LTD reported at AIRONLINE 2021 SC 152.

14. After considering the rival contentions of the parties and upon perusal of the materials on records, it appears to this Court that, the application at page 15 to the affidavit-in-



opposition clearly shows that the appellant award debtor prayed stay of execution proceeding. Therefore, as on the date of filing of the said application on September 05, 2024, the appellant award debtor was not aware that the section 34 proceeding was dismissed by that time.

15. The appellant had deposited 75 per cent of the awarded sum and showed their bonafide to proceed with the appeal so that the award cannot be executed against the appellant to make further proceeding infructuous. The admitted position is also that the respondent award holder has received 75 per cent of the awarded sum upon furnishing equivalent sum of bank guarantee, which is still lying with the appellant department.

16. The order dated September 05, 2024 passed in the said application filed by the appellant seeking stay of the execution proceeding shows the decree holder being the respondent herein submitted before the executing court that the section 34 application being Other Suit No.2 of 2019 was rejected on February 27, 2024 and in view of such rejection, there was no scope for stay of the execution proceeding.

17. The statements made in **paragraph 4** in the condonation application are corroborated by the relevant records **at pages 15 and 16** to the affidavit-in-opposition.

18. Inasmuch as condonation of delay by Court largely depends on the conduct of the applicant and the bonafide of the applicant.

19. To prefer an appeal, under section 37 of the Arbitration Act as in the instant case, is a statutory right of the appellant. For procedural laches, such substantive right may not be taken



way. Pleading filed and exchanged between the parties before this Court show that the appellant was willing to contest the proceedings at all material time. The appellant has engaged learned advocate who has taken all the steps on behalf of the appellant before the jurisdictional civil court. In such circumstance, this court is of the view that the appellant has proceeded with all due diligence and bonafide in preferring the instant appeal.

20. ***In the matter: of State of Madhya Pradesh (supra)***, the ratio laid down therein is a settled proposition of law that sufficient cause has to be assigned while applying for condonation of delay to the satisfaction of the Court. Each case depends on its own facts, while assessment of the conduct of the applicant comes before the Court.

21. In the instant case, as already discussed above, this court is satisfied with the conduct of the appellant was all along bonafide and the causes shown by the appellant being corroborated by the existing records. This Court is also of the view that sufficient cause has duly been explained.

22. ***In the matter of: Government of Maharashtra (Supra)***, the judgment was rendered by the Hon'ble Apex Court where the limitation was in issue under the Commercial Courts Act. The Commercial Courts Act being a self contained Code provides for specified period of limitation for preferring a commercial appeal. It is settled that, the Court cannot extend the period of limitation specifically provided under the special statute. In the facts of the case, this is not such. In the instant appeal preferred under section 37 of the Arbitration Act, the Act



does not specify any particular period of limitation. Section 43 of the Arbitration Act provides for the application of the provisions under the Limitation Act, 1963 in general. Therefore, the ratio laid down ***In the matter of: Government of Maharashtra (supra)*** shall not apply in the facts of the instant case.

23. In view of the foregoing reasons and discussions, this court is of the firm and considered view that the delay in preferring the instant appeal being sufficiently explained, should be condoned.

24. Accordingly, the delay in filing the instant appeal stands **condoned**, subject to payment of cost of Rs.50,000/- to be paid to the respondent positively within a period of two weeks from date.

25. On the aforesaid terms, the instant application **CAN/1/2024** stands allowed.

26. Subject to payment of costs as directed hereinabove, once this application stands allowed, the appeal shall be registered on the board by the department, in accordance with law.

(**Aniruddha Roy, J.)**

(**Bibhas Ranjan De, J.)**