

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5505 OF 2012  
[ARISING OUT OF S.L.P. (C) NO. 21357 OF 2011 ]

M/S. PAWAN KUMAR & COMPANY

... APPELLANT(S)

Versus

PUNJAB STATE WAREHOUSE CORPORATION

... RESPONDENT(S)

O R D E R

Leave granted.

2. We have heard Mr. R. Anand Padmanabhan, learned counsel for the appellant and Mr. A.P. Dhamija, learned counsel for the respondent.

3. One of the submissions of the learned counsel for the appellant is that the appeal preferred by the respondent before the High Court under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act") was barred by 202 days and an application under Section 5 of the Limitation Act, 1963 was made by the respondent who was the appellant before the High Court but the High Court without passing any order on the application for condonation of delay proceeded to deal with the appeal on merits and allowed the same. Learned counsel for the appellant submits that the appeal preferred by the present respondent was not competent to be heard on merits until the delay in filing the same was condoned.

4. Mr. A.P. Dhamija, learned counsel for the respondent has not been able to show us any order of the High Court condoning the delay in filing the appeal.

5. We find merit in the submission of the learned counsel for the appellant that the appeal preferred by the present respondent under Section 37 of the 1996 Act was not competent to be heard on merits until delay in filing the same was condoned.

6. Since nothing has been shown to us by the learned counsel for the respondent that the delay in filing the appeal was condoned by the High Court, we are left with no alternative but to set-aside the impugned order and restore the appeal being F.A.O. No. 5109 of 2008 - Punjab State Warehouse Corporation vs. M/s. Pawan Kumar and Company and the application under Section 5 of the Limitation Act, 1963 to the file of the High Court.

7. Civil Appeal is, accordingly, allowed. F.A.O. No. 5109 of 2008 - Punjab State Warehouse Corporation vs. M/s. Pawan Kumar and Company along with the application under Section 5 of the Limitation Act, 1963 are restored to the file of the High Court. The High Court shall first consider the application for condonation of delay. If the delay in filing the appeal is condoned, only then the High Court shall consider the appeal. In that event, it shall be open to the parties to make their submissions as may be available to them.

8. No order as to costs.

.....J.  
(R.M. LODHA)

.....J.  
(ANIL R. DAVE)

NEW DELHI  
JULY 24, 2012.

ITEM NO.4                      COURT NO.7                      SECTION IVB

S U P R E M E   C O U R T   O F   I N D I A  
R E C O R D   O F   P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).21357/2011

(From the judgement and order dated 11/02/2011 in FAO No.5109/2008 of The  
HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

M/S. PAWAN KUMAR & COMPANY

Petitioner(s)

VERSUS

PUNJAB STATE WAREHOUSE CORPN

Respondent(s)

(With prayer for interim relief and office report )  
[FOR FINAL DISPOSAL]

Date: 24/07/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s)            Mr. R. Anand Padmanabhan, Adv.  
                                 Ms. Shubhanda Deshpande, Adv.  
                                 Mr. Piyush Gupta, Adv. for  
                                 Mr. Shashi Bhushan Kumar, Adv.

For Respondent(s)            Mr. A.P. Dhamija, Adv. for  
                                 Mr. Sarad Kumar Singhania, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

Appeal is allowed in terms of signed order. No costs.

(Pardeep Kumar)		(Renu Diwan)	
Court Master		Court Master	

[ SIGNED ORDER IS PLACED ON THE FILE ]