

Neutral Citation No. - 2025:AHC-LKO:26557-DB

A.F.R.

**High Court of Judicature at Allahabad
Lucknow**

Reserved on : 05.04.2025

Delivered on : 07.05.2025

Court No. - 2

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 9 of 2025

Appellant :- The Project Director, Uphsdp, Lucknow And Ors.

Respondent :- Commercial Court No. 1 Lucknow Thru Its Presiding Officer And Ors.

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Abhinav Bhattacharya

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per : Om Prakash Shukla, J.)

**Order on C.M. Application No.IA/1/2025 : Application for
Condonation of Delay**

(1) Heard Shri Tushar Verma, learned Additional Chief Standing Counsel for the appellants and Mr. Abhinav Bhattacharya, learned Counsel for the respondents on the present application for condonation of delay in filing the appeal,

Introduction

(2) The present appeal has been filed by the appellants under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015, interdicting the judgment and order dated 07.09.2024 passed by the learned Presiding Officer, Commercial Court No.1, Lucknow in Arbitration Case No. 08 of 2023 : *The Project Director,*

UPHSDP, Lucknow & Ors. Vs. M/s Maruti Construction) as well as Arbitral Award dated 31.01.2021 passed by the learned Arbitrator.

- (3) The application under section 34 of the Arbitration and Conciliation Act, 1996 against the Arbitral Award dated 31.01.2021, has been dismissed on the grounds of limitation.

Order on Practise Directions

- (4) Before proceeding to adjudicate the application for condonation of delay in filing the present appeal, it is pertinent to note the growing trend of impleading the Civil Court and/or the Tribunals as a respondent in an appeal or writs, wherein the order passed by the said Civil Court or the Tribunal is impugned therewith. While the said issue seems to have been decided 25 years ago by the Hon'ble Apex Court, however, the recent spurt in arraying the Civil Court or the Tribunal, as the case may be, through its Presiding Officer, enjoins upon this Court a bounden duty to reiterate the settled law. Having said so, it must be understood that Courts/Tribunals, in this country when act in judicial capacity enjoy certain kind of immunity from being prosecuted and sued as a Court in their individual or personal capacity, with exceptions like allegations of *mala fide*, partiality, bias etc. against that particular Presiding Officer of the Court/Tribunal, which needs to meet a higher degree of threshold, before the same are alleged. We find that these Civil Courts/Tribunals

cannot be made a party in any proceeding wherein they have decided the matter, as these decisions are subject to rectification by the appellate or revisional Court in a judicial proceeding. This view of ours is supported by the judgment of the Apex Court rendered in **Savitri Devi v. District Judge, Gorakhpur and others** : AIR 1999 SC 976, which still holds the ground and reads in the conclusion part as follows :-

“Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the Special Leave Petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are shown as respondents and in the Special Leave Petition they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.”

(emphasis supplied)

- (5) It has to be understood that neither the Court or the Tribunal or the Presiding Officer(s) of the Court/Tribunal for that matter is required to defend its order before the superior Court. If the High Court, in exercise of its appellate or revisional jurisdiction, as the

case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being necessarily impleaded as a party. These Courts or Tribunals merely adjudicate the issue between the parties and have no personal interest and have nothing to do with the issues raised or adjudicated by them and, as such, are not required to defend their order(s) in any manner. Since, they are not required to defend their order, no useful purpose would be served in making them a party before the appellate forum or revisional Court, as the case may be, rather being juxtaposed, it would mean embarrassment, dejection and create a hurdle in independence of the Judiciary. The Apex Court resonating the aforesaid understanding has observed in **Jogendrasinghji Vikaysinhji Vs. State of Gujrat** : (2015) 9 SCC 1 as under :-

“.....Civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite few examples; the tribunals constituted under the Administrative Tribunals Act, 1985, the Custom, Excise & Service Tax Appellate Tribunal, the Income Tax Appellate Tribunals, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party,

for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give another example:- in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable.”

- (6) Thus, we are of the view that the respondent No.1 herein (the Commercial Court-1, Lucknow, through its Presiding Officer) is not to be made a party in the present appeal filed against an order passed by the said Court in its judicial capacity. In any case, it also does not satisfy the requirement of being a necessary or a proper party, so as to be made a party to the present appeal. This Court in respectful agreement with a view expressed by the Apex Court in *Savitri Devi's case* deprecates the practice of making ‘the Commercial Court-1, Lucknow, through Presiding Officer,’ as a party-respondent in the present appeal and, as such, directs the Office to delete the “Presiding Officer, Commercial Court-1, Lucknow, through its Presiding Officer.” as respondent No.1 from memo of parties of the present appeal.

- (7) Similarly, as far as impleading an Arbitrator as a party in a petition under Section 34 or 37 of the Arbitration and Conciliation Act, 1996 in a Commercial Court is concerned, this Court drawing an analogy applicable to the Commercial Courts or the Civil Courts, also holds that learned Arbitrator ought not to be impleaded as a party-respondent in any proceedings under Section 34 or 37 of the Arbitration and Conciliation Act, 1996. It has to be understood that the provisions of the Act provide for various grounds for challenging an award under Section 34 of the Act, 1996 and also provides for a right to appeal under section 37 of the said Act, 1996. In both the cases, it is the award, which is the subject matter of adjudication before the Courts and, as such, there is no point in impleading the learned Arbitrator as a party-respondent as the Arbitrator is neither required to be a person defending the award nor he ought to be personally interested in the subject-matter of the dispute. This Court cannot be oblivious to the fact that often, Arbitrators are embarrassed upon receipt of notice by this Court, which put them into unnecessary burden and in almost all cases, they go unrepresented. Thus, they cannot be termed as contesting respondent. Just as in case of a revision or an appeal the lower forum or the Judge manning the lower forum is not impleaded as a party, in proceedings under Section 34 or 37 of the Arbitration and Conciliation Act, 1996, the Arbitrator or the members of the Arbitral Tribunal are utterly unnecessary parties unless specific personal allegations are levelled against

them. It is only in a rare case when a personal allegation is made against an Arbitrator, he would be required to answer the specific allegations made against him and in those rare cases, such an arbitrator may be impleaded. Further, there are various provisions in the Arbitration and Conciliation Act itself, wherein the Arbitrator may be made a Party-Respondent, however, in all cases, wherein the Award has been delivered and primarily when the Arbitrator has become *functus-officio*, ordinarily there is no requirement of making the said Arbitrator or the Arbitral tribunal, as the case may be, a Party-Respondent under proceeding under section 34 or 37 of the Arbitration & Conciliation Act, 1996. As far as the present case is concerned, this Court does not find any personal allegations directed towards the learned Sole Arbitrator and as such, direct the office to delete the "*Engineer Shri P.N. Gupta, Sole Arbitrator*" as respondent No.2 from the memo of parties of the present appeal.

- (8) In view of the aforesaid, we propose to issue a practice direction to the effect that the learned Counsel(s), while filing appeal under section 37 of the Arbitration & Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015, would not implead the Courts/Tribunals or Arbitrators before this Court, unless there are specific averments in the appeal related to allegations of proved misfeasance/misconduct against that particular Presiding Officer of the Court/Tribunal.

- (9) This practice direction has to be observed by all litigants, who propose to file appeal under section 37 of the Arbitration & Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015.

Background of the Appeal

- (10) The facts as available from records of the present case is that the respondent-Maruti Construction Limited (claimant in the Arbitration Proceedings) on being successful in the bid invited by the petitioner-UPHSDP, entered into an Agreement dated 21.02.2002 for execution of the work of '*repair, renovation and extension work of District Hospital Male (DHM), Sultanpur, District Hospital- femal (DHF), Sultanpur and BPHC-Sangrampur in District-Sultanpur, Uttar Pradesh*' for a total contract price of Rs. 87,62,721.40. The stipulated period of the contract was 12 months. Apparently, after completion of work, the final bill was not paid by the petitioner (*respondent in the Arbitration proceeding*), certain payments were withheld and it was the contention of the respondent-contractor that the final bill was never prepared by the petitioner nor any copy of the final Bill was given to them. The respondent-Contractor, thus, claimed payments under the final bills as well as for extra items and damages/compensation under the contract, whereas it was contended by the petitioner that the execution of the work was delayed and even extension of time was also granted to the

respondent and, as such, the Bank Guarantee was rightly encashed by them and further no payments were required to be paid. Thus, a dispute having been raised and the same being not settled by the adjudicator as per the Agreement, was referred to Arbitration of an Engineer Mr. P.N. Gupta, appointed by the Institution of Engineers (India). The learned Sole Arbitrator, framed inasmuch as 15 issues and awarded certain claims of the respondent along with interest vide award dated 31.01.2021.

- (11) Apparently, the appellants being not satisfied by the award delivered by the Sole Arbitrator filed an Objection under section 34 of the Arbitration and Conciliation Act, 1996 on 03.02.2023, accompanied by an application for condonation of delay, claiming therein that the authentic/complete copy of the award dated 31.01.2022 was procured by the appellants only on 27.12.2022 and, as such, the objections were within the statutory limitation period as prescribed under section 34 (3) of the Arbitration and Conciliation Act. However, it seems that the learned Commercial Court-1, Lucknow, did not find any substance in the argument of the appellants and, as such, relying on two judgments of the Apex Court in (i) **Union of India Vs Popular Construction Co.** : (2001) 8 SCC 470 and (ii) **Simplex Infrastructure Limited Vs Union of India** : (2009) 2 SCC 455, dismissed the said application/objections filed by the appellants

on the ground of limitation vide judgment and order dated 07.09.2024.

- (12) The said judgment and order dated 07.09.2024 is subject matter of the present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015. The present appeal is also accompanied by an application for condonation of delay in filing the present Appeal. Although, the said application for condonation of delay is accompanied by an affidavit, however, there is no mention as to, for how many days of delay the said application has been filed. Thus, this Court has been entrusted with the arduous task to ascertain the number of days of delay and to examine as to whether the reasons mentioned for the said number of days delayed are whether sufficient for condoning the said delays.
- (13) A close examination of the present appeal would reveal that the appeal was firstly filed on 22.01.2025 challenging the impugned order dated 07.09.2024, but with several defects. It was re-filed again on 07.02.2025 by removing the defects as well as accompanying with application for condonation of delay. Impugned judgment was passed on 07.09.2024. The limitation for filing the appeal under Section 37 of the Act, 1996 being 60 days from the date of judgment and order, the same expired on 06.11.2024. The affidavit in support of the application under Section 5 of the Limitation Act is dated 07.02.2025. Thus, as on

22.01.2025 i.e. when the appeal was firstly filed, the delay was of about 77 days and as on 07.02.2005 i.e. when the appeal was re-filed along with the application for condonation of delay after removing the defects, the delay was about 93 days. The reasons for delay has been mentioned in paragraph 24 to 36 of the affidavit accompanying the application for condonation of delay.

Law of Limitation holding the ground for filing of an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996

(14) At this juncture, we would like to discuss the law of limitation holding the ground for filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015.

(15) Section 37 of the Arbitration and Conciliation Act, 1996 deals with general provision for filing appeal, which *inter alia* provides as under : -

“(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: –

[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) Setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal--

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

(16) Apparently, the Arbitration and Conciliation Act, 1996 does not provide any specific limitation for filing such appeals under Section 37 of the Arbitration and Conciliation Act, 1996 as it provides for filing an objection/application against the Arbitral Award as per section 34 (3) of the said Act. However, Section 43 of the Arbitration and Conciliation Act, 1996 provides that the Limitation Act, 1963 (‘hereinafter referred to as ‘**Limitation Act**’) shall apply to arbitrations as it applies to proceedings in Court. The Hon’ble Supreme Court in the case of **Consolidated Engineering Enterprises v. Irrigation Department**: (2008) 7 SCC 169] held that where the Limitation Act prescribes a period of limitation for appeals or applications to any Court and the special Act does not prescribe any period of limitation, then the limitation prescribed in the Limitation Act will be applicable along with Sections 4 to 24 thereof, unless they are expressly excluded by the special Act. Thus, by necessary implication, the period for preferring an appeal under Section 37 of the Act, 1996 would be as per Article 116 or Article 117 of the Schedule provided for in the Limitation Act. Suffice to say, that Articles 116 and 117 of the Schedule of the Limitation Act provide for a

limitation period of 90 days for filing an appeal from any other Court to a High Court and a period of 30 days for filing an *intra* appeal before the High Court, i.e., order passed by a Single Bench to the Division Bench, provided the law provides for such an appeal before the Division Bench. Having quoted and mentioned Article 116 and 117 of the Schedule of the Limitation Act, applicable ordinarily for the aforesaid nature of appeals, it goes without saying that in case of any delay in preferring any such appeals, Section 5 of the Limitation Act provides for extension of the prescribed limitation period, provided the applicant satisfies the Court that there was a ‘sufficient cause’ for such delay.

- (17) However, with the promulgation of the Commercial Courts Act, 2015 (hereinafter referred to as ‘**Commercial Courts Act**’), a new regime of limitation for filing of the appeals under Section 37 of the Arbitration and Conciliation Act, 1996 came to force. Section 13 of the Commercial Court Act *inter alia* states :-

“Section 13: Appeals from decrees of Commercial Courts and Commercial Divisions.

(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of **sixty days from the date of judgment or order.**

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil

jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

- (18) Thus, the limitation for preferring of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 in view of the Commercial Court Act, is sixty days only and, of course, the provisions of Section 5 of the Limitation Act would apply for condonation of delay. However, there is a caveat, inasmuch as the Hon’ble Supreme Court in **Union of India v. Varindera Constructions Ltd.:** (2020) 2 SCC 111, while adjudicating the similar issue of limitation for filing of an appeal under Section 37 of the Act, 1996, has engrafted a limitation period of 120 days from the date of passing of the order and held that any further delay beyond 120 days cannot be allowed, which in a way ruled out the provisions of Section 5 of the Limitation Act in preferring an appeal under Section 37 of the Act, 1996. Hon’ble Supreme Court while noting that since as per Section 34 of the Act, 1996,

application has to be filed within a maximum period of 120 days, which also included a grace period of 30 days and nothing more, therefore, an appeal filed from the same should also be covered by the same ratio, has observed in the following words:

“Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10.04.2013 has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the self-same proceeding under Section 37 should be covered by the same drill. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul and Others vs. Keshwar Lal Chaudhuri and Others, AIR 1941 Federal Court 5, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.”

In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these Special Leave Petitions on the facts of this particular case.

(19) Thus, the Hon’ble Supreme Court declined to condone the delay of 142 days in filing of appeal in **Varindera Construction Ltd.** (supra) by holding that a maximum period of 120 days is available to a party filing an appeal under Section 37 of the

Arbitration and Conciliation Act, 1996 and to the same effect is another judgment of the Apex Court in *M/s N. V. International v. the State of Assam and Ors.* : (2020) 2 SCC 109, wherein also the Apex Court reiterated the position as stated in *Virendra Constructions Ltd. (supra)* and declined to condone a delay of 189 days from the 90 days in filing an appeal under Section 37 of the Act, 1996. The Apex Court in the said judgment also placed emphasis upon the main object of the Act, i.e., speedy disposal of arbitral disputes and held that any delay beyond 120 days cannot be condoned.

(20) In both these decisions, the earlier judgment i.e. **Consolidated Engineering Enterprises (Supra)** could not be noted.

(21) Law laid down in both the cases i.e **Varindera Construction Ltd. (supra)** and **M/s N.V. International (supra)** came up for consideration before a three-Judge Bench of the Apex Court in **Government of Maharashtra Vs M/s Borse Brothers Engineers & Contractors Pvt. Ltd. : 2021 SCC OnLine SC 233**, wherein the Apex Court noted the conflicting position vis-a-vis **Consolidated Engineering Ltd (supra)** and taking into consideration the provisions of Commercial Courts Act, 2015 and decision **Consolidated Engineering Ltd. (supra)** held that if the specified value of the subject matter is INR 3,00,000.00 or more, then an appeal under Section 37 of the Act must be filed within 60 days from the date of the order as per Section 13 (1A) of the

Commercial Courts Act. However, in those rare cases, where the specified value is for a sum less than INR 3,00,000.00 then the appeal under Section 37 of the Act, 1996 would be governed by Articles 116 and 117 of the Schedule of the Limitation Act, as the case may be. The Hon'ble Supreme Court in the said case has held that Section 37 of the Act, 1996 when read with Section 43 of the Act, 1996 and Section 29(2) of the Limitation Act, makes it clear that Section 5 of the Limitation Act will apply to the appeals filed under Section 37 of the Act, 1996 and in holding the said applicability, the Apex Court noted with affirmative that Section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Act, 1996 and merely provides for a limitation period of 60 days from the date of the judgment or order appealed against, without going into whether delay beyond this period can or cannot be condoned. However, the Apex Court also noted that condonation of delay, although allowed, cannot be seen in complete isolation of the main objective of the Act, i.e. speedy disposal of disputes. In the light of the same, the Apex Court observed that the expression '*sufficient cause*' under Section 5 of the Limitation Act is not elastic enough to cover long delay and merely because sufficient cause has been made out, there is no right to have such delay condoned. The Apex Court further held that only short delay can be condoned by way of an exception and not by the way of rule, and that too, only when the party acted in a *bona fide* manner and

not negligently. Thus, the Apex Court has *inter alia* held in **Government of Maharashtra Vs M/s Borse Brothers Engineers & Contractors Pvt. Ltd. (Supra)** as follows :-

“61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts 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.”

(22) In the present appeal, this Court finds that the impugned order is dated 07.09.2024. Thus, as on 22.01.2025 i.e. when the appeal was firstly filed, the delay was of about 77 days and as on 07.02.2005 i.e. when the appeal was re-filed along with the application for condonation of delay after removing the defects, the delay was about 93 days.

Order on the report of Stamp Reporter

(23) As per the report of the Stamp Reporter, the Appeal would had been in time up to 06-12-2024 (wrongly mentioned as it should be 06-11-2024) and thus has put an endorsement in its report to the extent that *“Beyond time by 47 days as on 22.01.2025. Delay filed upto 07.02.2025 at 11:00 AM”*. First and foremost, the Stamp Reporting Officer has incorrectly mentioned that the

appeal would have been in time, had the same been filed upto 06-12-2024, for the simple reason that the impugned order sought to be challenged was passed on 07.09.2024 and the limitation of sixty days as per section 13 (1A) of the Commercial Court Act, 2015 as discussed herein above lapsed on 06-11-2024. It seems that Reporting Section has treated the period of limitation as 90 days which is incorrect as it is an appeal against order of a Commercial Court, under Section 37 of the Act, 1996. Thus, the appeal would have been within time, had it been filed on or before 06-11-2024 and not 06-12-2024 as erroneously reported in the stamp report. Secondly, the stamp reporting contains the date '22.01.2025' possibly indicating that the first date of e-filing of the Appeal, however, the fact of the matter remains that the Appeal was e-filed with too many defects as pointed out by the registry and it came to be eventually re-filed after removing defects accompanying with application for condonation of delay on 07.02.2025 as is also apparent from the stamp report. Considering the first date of filing the appeal i.e. on 22.01.2025, the present appeal would be delayed by 77 days, whereas on considering the date of re-filing after removing defects accompanying with application for condonation of delay i.e. 07.02.2025, the present appeal would be delayed by 93 days.

Consideration for Application of Condonation of Delay

(24) That brings this Court to the application filed by the appellants seeking condonation of delay in filing of the present appeal under Section 37 of Act, 1996.

(25) The condonation of delay application and supporting affidavit filed by the appellants makes for an interesting reading and this Court finds appropriate to quote relevant part of the affidavit which *inter alia* also would show as to whether any “*sufficient cause*” has been made out by the appellants to condone the delay in filing the appeal or not. The affidavit for delay condonation *inter alia* states from paragraph 24 to 36; as follows: -

“24. That the learned commercial court after hearing the parties and filling of objections by the respondent/opposite party finally dismissed the application under section 34 of the Act, 1996 filed by the appellants on the ground of limitation only holding the proceedings under section 34 to the time barred vide order dated 07.09.2024.

25. That vide the Directorate General’s letter dated 25.09.2024, request was made before the state Government seeking necessary instructions in the Matter. A true copy of the letter dated 25.09.2024 is being filed as **Annexure-D9** to this affidavit.

26. That vide the Government’s letter dated 21.10.2024, instructions were given to the Directorate of Medical Health Services to seek legal opinion from the Chief Standing Counsel and thereafter provide necessary narrative of the case along-with the legal opinion provided.

27. That the legal opinion was sought from the Chief Standing Counsel through Directorate General’s dated 23.10.2024.

28. That the legal opinion was accorded by the learned State Law Officer through letter dated 12.11.2024 to challenge the order 07.09.2025

passed by the learned Commercial Court, Lucknow before the Hon'ble High Court by filing appeal.

29. That after receiving the legal opinion dated 12.11.2024 thereafter vide Directorate General's letter dated 13.11.2023 sent before the State Government necessary permissions and approval were sought for challenging the order dated 07.09.2024 before the Hon'ble High Court.

30. That vide contest permission dated 21.11.2024 the necessary approvals and sanctions were accorded by the State Government.

31. That after the issuance of necessary contest permission vide order dated 21.11.2024, the State Government vide its letter dated 26.11.2024, the aforesaid contest order dated 21.11.2024 was received in the office of the Directorate of Medical Health and Services, UP. A true copy of the letter dated 26.11.2024 is being filed as **Annexure-D10** to this affidavit.

32. That thereafter the Directorate of Medical and Health Services, UP vide its letter dated 26.11.2024 received in the Office of Chief Standing Counsel, High Court, Lucknow on 27.11.2024 on which the relevant file was allotted to the learned State Law Officer on 29.11.2024 for the preparation of Appeal.

33. That the State Law Officer who was allotted the relevant file received the aforesaid allotted file on 02.12.2024 and asked the concerned pairvkar for the certified copy of the order dated 07.09.2024 whereby it was informed that they only have the photocopy of the order dated 07.09.2024, as such it was instructed to apply for the certified copy of the order dated 07.09.2024 for the purposes of filing the appeal before this Hon'ble Court.

34. That in view of aforesaid the certified copy was applied on 03.12.2024 which was received on 01.01.2025 and handed over to the learned State Law Officer for the purposes of filing the appeal on 06.01.2024.

35. That thereafter certain other letters and documents were required since the arbitration case between M/s Marutti Constructions Versus The Project Director And Others was relevant records with regard to the aforesaid arbitration case were not available with the Directorate of Medical And Health, UP. As such after the allotment of the

relevant file with regard to the challenging the judgment and order dated 07.09.2024 the relevant documents sought by the learned State Law Officer could only be provided on 13.01.2025 and after which the Appeal was prepared and filed through e-filing on 20.01.2025 on which too many defects were pointed out by the registry. Although the defects were being tried to be removed but the agreement as well as the award dated 31.01.2021 being bulky took some considerable time to get typed as such after completion again it was e-filed with certain more defects which also included the requirement of the copy of the Decree of the impugned order dated 31.01.2021.

36. That on aforesaid immediately the copy of the formal order has been applied on 24.01.2025 which could be obtained on 06.02.2025. Thereafter removal of all the effects the appeal is being filed without any further delay...”

- (26) The appellant has also cited several judgments in the affidavit in support of their plea for condonation of delay, however, this Court is unable to accept the plea of the appellant that sufficient cause has been shown for filing of the present appeal with delay. It is clear from paragraph 25 of the affidavit that the appellant first approached the State Government only on 25.09.2024, i.e., after approximately 18 days of passing of the impugned order, especially when the Directorate very well knew that their application under section 34 of the Act, 1996 had been primarily rejected on the ground of limitation. The State Government thereafter took its own sweet time of more than 28 days to intimate the Directorate to seek legal opinion from the Chief Standing Counsel, who gave his opinion to challenge the impugned order on 12.11.2024 as per paragraph 28 of the Affidavit. Thus, precious time of 65 days lapsed in merely taking

opinion from the Chief Standing Counsel and by the time the said advice was received by the Directorate, the prescribed period limitation of 60 days as prescribed under section 13(1A) of the Commercial Court Act had already lapsed. The appeal was not filed immediately thereafter, but the Directorate went on to seek approval from the State Government, which came to be accorded only on 21.11.2024, after the time-period for filing the appeal has already expired. Interestingly, the matter does not end here, as, even after the approval was accorded on 21.11.2024, as per the own showing of the appellant, the appeal came to be filed ultimately on 22.01.2025 but with defects, therefore, it has taken back and was filed again only on 07.02.2025 i.e almost after 77 days of the necessary approval and sanction accorded by the State Government. A feeble attempt has been made by the appellant to justify the period between 03.12.2024 to 01.01.2025 i.e a period of 28 days in procuring the certified copy of the impugned order as per paragraph 33 of the Affidavit. However, this Court finds that even the said period taken for procuring a certified copy cannot come to the rescue of the appellant for condoning the delay of the said 28 days, as any exclusion in terms of section 12 of the Limitation Act could be claimed only, if the application for certified copy was made before the expiry of limitation period, as has been also held by the Supreme Court in **V. Nagarajan vs. SKS Ispat & Power Ltd. & Ors. : (2022) 2 SCC 244.**

- (27) Thereafter, the appellant has tried to justify further delay on the ground of collating certain letters and documents of arbitration proceedings between 06.01.2025 to 20.01.2025, which again seems to be of no avail as neither any details of the letters or the nature of documents have been mentioned nor there is any indication as to why such action was not taken earlier. The reasons appear to be casual as is also evident from the contents of the affidavit that the appellant had waited for one task to be completed for another task to take for filing the present Appeal, which can be termed as a half-hearted attempt by the Directorate to file the present appeal, if not lackadaisical attitude in pursuing the present matter.
- (28) The judgments of the Supreme Court in *Borse Brothers' case* emphasizes the objective of speedy resolution of disputes by arbitration, and holds that the Court's consideration of an application for condonation of delay in filing of an appeal under Section 37 of the Act, must be informed by that overarching objective.
- (29) This Court finds that the explanation offered in the present case by the Directorate, is broadly in the nature of administrative lethargy of the Government machinery, which cannot meet the threshold of 'sufficient cause' to condone the delay caused in filing the present appeal. These explanations cannot be termed as

“sufficient cause” for condoning the delay and the contention of the Appellant being a Government organisation also cannot come to any advantage. In fact, the Apex Court emphatically held in **M/s Borse Brothers Engineers & Contractors** (supra), that there is no special concession in the context of limitation to a Government body as far as the Commercial Court Act is concerned. The Apex Court, relevant to the context, observed and held as follows :-

“57. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 [“Postmaster General”], as follows:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."*

- (30) Further, the expression '*sufficient cause*' under Section 5 of the Limitation Act is not elastic enough to cover long delays and merely because sufficient cause has been made out, there is no right to have such delay condoned. The Apex Court in *Borse Brothers Case* held that only short delays, can be condoned by way of an exception and not by the way of rule, and that too only when the party acted in a *bona fide* manner and not negligently. It must be understood that given the object of both the Arbitration & Conciliation Act, 1996 and the commercial Act, 2015, being speedy resolution of disputes embedded, the expression "sufficient cause" must be given a restrictive meaning to relate and/or associate to those causes for which a party claiming condonation could not be blamed for. We do not find any such circumstances pleaded in the present Appeal. Further, it must also be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in the

case of **Ramlal Vs. Rewa Coalfields Ltd.**, (1962) 2 SCR 762,
which says as follows:-

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by s. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under s. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of ss. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of s. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under s. 5 without reference to s. 14.”

- (31)** As a sequel to the above, we do not consider this an appropriate case for condoning the delay in both situations i.e. (i) 77 days as on 22.01.2025 when the appeal was filed firstly albeit with defects and without application for condonation of delay and (ii) 93 days as on 07.02.2025 when the appeal was re-filed after removing the defects accompanied with an application for

condonation of delay in filing of the present appeal, keeping in view the objective of expeditious disposal imbibed in both the Arbitration and Conciliation Act, 1996 as well as the Commercial Court Act, 2015. Thus, the application for condonation of delay in filing the above-captioned appeal is hereby **rejected**.

Order on Appeal

(32) In the present appeal, the impugned order passed by the Commercial Court-1, Lucknow under Section 34 of the Act, 1996 has been sought to be challenged by the appellants by filing a belated appeal under Section 37 of the Act, 1996 beyond the permissible 60 days without any “sufficient cause” as aforesaid, thus, the above-captioned appeal is held to be time barred and is, accordingly, **dismissed**.

(33) A copy of the order shall be sent to the Registrar General for ensuring correct reporting of limitation in Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 arising out of Commercial Courts order.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 7th May, 2025
Ajit/-