IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

OMP(M) No. 74 of 2023 in
Arb. Case No.593 of 2023
Decided on: 22nd October, 2024.

The State of H.P. & Anr. ....Applicants/Objectors

Versus

M/s Garg Sons Estate Promoters Pvt. Ltd
...Respondents

Coram

Ms. Justice Jyotsna Rewal Dua,

[1]*Whether approved for reporting? Yes*

For the applicants: Mr. L. N. Sharma, Additional Advocate General.

For the respondent: Mr. Suneet Goel, Sr. Advocate with Mr. Vivek Negi and Ms. Vishwas Kaushal, Advocates.

Jyotsna Rewal Dua, Judge

Gist of the point involved in the lis is, in case the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act in short) are preferred beyond three months-the period of limitation prescribed under

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[1] *Whether reporters of Local Papers may be allowed to see the judgment? yes*

Section 34(3) of the Act, but within the extendable period of thirty days in terms of proviso thereto, whether the objector is required to explain 'sufficient cause' for the entire period from the date of receipt of the award till the date of filing of the objections or only for the period beyond three months up to the date of filing of the objections.

Award was passed on 20.02.2023 in favour of the non-applicant/respondent by the learned Sole Arbitrator. The State of Himachal Pradesh, feeling aggrieved against the aforesaid award, has preferred objections under Section 34 of the Arbitration & Conciliation Act, 1996 (the Act in short). These objections have been preferred twenty-seven days beyond the period of three months prescribed under Section 34(3) of the Act. Hence, this application has been moved under Section 36(4) of the Act for condoning the delay in filing the objections under Section 34 of the Act.

At the very outset, it may be noticed there is no such provision as Section 36(4) of the Act, under which the application has been moved seeking condonation of delay in preferring the objections under Section 34 of the Act. The application, therefore, is treated to have been filed under

Section 34 (3) of the Act.

2. Facts and Submissions

2(i). Factual position relevant for the purpose of adjudicating this application is not in dispute:-

- Award was passed by the learned Arbitrator on 20.02.2023.
- Signed copy of the award was received by the applicants/objectors on 20.02.2023 itself.
- Three months' period available under Section 34 (3) of the Act for preferring objections against the award lapsed on 20.05.2023. The objections were preferred on 16.06.2023 i.e. on 117th day from the date of passing of the award or in other words 27th day after the expiry of three months' period from the date of receipt of the award.

2(ii). The applicants/objectors have pleaded following factual reasons for condoning the delay in filing the objections: -

2(ii)(a) After receipt of the signed copy of the award on 20.02.2023, applicant No.2, Executive Engineer, Karchham Division, HPPWD Bhabanagar, District Kinnaur, H.P., vide

his letter dated 11.04.2023, submitted a copy of the award to the office of the Superintending Engineer 11th Circle HPPWD, Rampur, District Shimla for further necessary action.

2(ii)(b) The office of the Superintending Engineer on 19.04.2023, further submitted the award alongwith record of the case to the office of the Engineer-in-Chief HPPWD Shimla for examination.

2(ii)(c) The matter was examined in the legal cell of the Engineer-in-Chief, whereafter it was submitted to the State Government on 10.05.2023.

2(ii)(d) The matter was examined at the Government level in consultation with Law Department. The opinion of Law Department was conveyed by the applicant No.1-State of HP through Principal Secretary (Public Works) on 27.05.2023.

2(ii)(e) The Engineer-in-Chief HPPWD, Shimla conveyed the decision of the State to applicant No.2 on 03.06.2023.

2(ii)(f) Applicant No.2, thereafter took steps for preparing and drafting the objections. The same were prepared and filed on 16.06.2023.

In view of above, learned Additional Advocate General submitted that the delay in filing the objections was

neither intentional nor willful but had taken place for the reasons beyond the control of the applicants/objectors. Prayer was made for condoning the delay.

2(iii). The **non-applicant/respondent, in its reply** to the application, took a pertinent objection that no justifiable cause has been assigned by the applicants/objectors for taking about two months in mere forwarding the signed copy of the award dated 20.02.2023 to the Superintending Engineer for taking further necessary action; That according to the applicants/objectors, signed copy of the award was received by them on 20.02.2023, but, it was forwarded to the concerned Superintending Engineer, only on 11.04.2023. This period of fifty days has gone absolutely unexplained.

Learned Senior Counsel for the non-applicants/respondent contended that sufficient cause has not been shown by the applicants/objectors in order to condone the delay in moving the objections. Prayer was made to dismiss the application.

2(iv) The **applicants/objectors in their rejoinder** have not given any reason for not taking the required action on the award for a period of about two months. As per the

averments made in the rejoinder:- The applicants/ objectors were seeking condonation of delay beyond the prescribed limitation of three months; The two months' period from 20.02.2023 (date of receipt of signed copy of the award) to 11.04.2023 (forwarding the same to the concerned Superintending Engineer) was within the period of three months available to the applicants/objectors under Section 34 of the Act, therefore, the applicants/ objectors are not required to explain the reasons for not taking any action during this period of about two months; The reasons are necessary to be furnished only for the delay beyond the period of three months in filing the objections; The applicants have justifiably explained the delay of twenty-seven days; Hence, this period of twenty-seven days taken by the applicants/objectors beyond the period three months in preferring their objections needs to be condoned. These very submissions were urged by the learned Additional Advocate General for condoning the delay in preferring the objections against the award.

3. Heard learned counsel for the parties and considered the case file.

4. Consideration

4(i). Section 34 of the Act provides the remedy as also the limitation period for setting aside an arbitral award. Section 34(3) provides the limitation period for filing objections against the arbitral award and reads as under: -

Section 34 (3) of the Act

> *"An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal.*
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> *Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."*

As per Section 34 (3) of the Act, objections can be filed against the arbitral award within a period of three months from the date of receipt of the award or from the date of disposal of the request made under Section 33 of the Act. In terms of the proviso to Section 34(3) of the Act, in case the Court is satisfied that the applicant was prevented by sufficient cause from making the application against the

arbitral award within the prescribed period of three months, it may entertain the application within a further period of thirty days, but not thereafter.

4(ii) In the instant case, objections were not preferred within the prescribed period of three months from the date of receipt of the arbitral award. The objections are, however, within the further period of thirty days, which can be made available to a party in given facts and circumstances, in terms of proviso to Section 34(3) of the Act, upon satisfaction of the Court that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months.

4(ii)(a) In **State of West Bengal represented through Secretary & Ors. Vs. Rajpath Contractors and Engineers Ltd.**[1] in context of interplay of Sections 4 and 5 of the Limitation Act, to the petition under Section 34 of the Act, it was held that the prescribed period under Section 34(3) of the Act is three months and further that given the language used in proviso to Sub-Section 3 of Section 34 of the Act, applicability of Section 5 of Limitation Act to the petition

[1] (2024) 7 SCC 257

under Section 34 of the Act has been excluded. The period of thirty days beyond three months which the Court may extend on sufficient cause being shown under the proviso to Section 34(3) of the At is not the 'period of limitation' therefore, not the 'prescribed period. Relevant paras from the judgment read as under: -

> *"9. We may note here that Section 43 of the Arbitration Act provides that the Limitation Act shall apply to the arbitrations as it applies to proceedings in the Court. We may note here that the consistent view taken by this Court right from the decision in the case of Union of India v. Popular Construction Co. is that given the language used in proviso to subsection (3) of Section 34 of the Arbitration Act, the applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Arbitration Act has been excluded.*
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> *10. Now, we proceed to consider whether the appellant will be entitled to the benefit of Section 4 of the Limitation Act. Section 4 of the Limitation Act reads thus:*
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> > *"4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.*

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

11. *The meaning of "the prescribed period" is no longer res integra. In the case of Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd. , in paragraphs nos. 13 and 14, the law has been laid down on the subject. The said paragraphs read thus:*

"13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

"2. (j) 'period of limitation' [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act;

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows subsection (3) of Section 34 of the 1996 Act is not the "period of limitation" and, therefore, not the "prescribed period" for the purposes of

> *making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to subsection (3) of Section 34 of the 1996 Act being not the "period of limitation" or, in other words, the "prescribed period", in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case."*
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> *Even in this case, this Court was dealing with the period of limitation for preferring a petition under Section 34 of the Arbitration Act. We may note that the decision in the case of State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another which is relied upon by the appellant, follows the aforesaid decision."*

4(ii)(b) In ***P. Radha Vs. Bai and others Vs. P. Ashok Kumar and another***[2]**,** it was reiterated that proviso to Section 34 (3) of the Act though provides for condoning the delay, however unlike Section 5 of the Limitation Act, the delay can be condoned only for a period of thirty days, that too on showing sufficient cause. Under Section 34(3) of the Act, the commencement period for computing the limitation period is the date of receipt of the award or the date of the

[2] (2019) 13 SCC 445

disposal of request under Section 33 (correction/additional award). Section 34 is the only remedy for challenging an award passed under Part-1 of the Act. Section 34(3) of the Act contains Limitation provision, which is inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an award passed under Part–I of the Arbitration Act. The party can challenge an award as soon as it receives it. Once an award is received, the party has knowledge of the award and the limitation period commences. Relevant paras from the judgment are as under: -

> *32.1 Section 34 is the only remedy for challenging an award passed under Part I of the Arbitration Act. Section 34 (3) is a limitation provision, which is an inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an Award passed under Part I of the Arbitration Act.*
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> *32.2 The time limit for commencement of limitation period is also provided in Section 34(3) i.e. the time from which a party making an application "had received the Arbitral Award" or disposal of a request under Section 33 for corrections and interpretation of the Award.*
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> *32.3.....*

32.4 The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase "but not thereafter" reveals the legislative intent to fix an outer boundary period for challenging an Award.

32.5 Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase 'where the time for making an application to set aside the arbitral award under Section 34 has expired". There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award.

42. In the context of Section 34, a party can challenge an award as soon as it receives the award. Once an award is received, a party has knowledge of the award and the limitation period commences. The objecting party is therefore precluded from invoking Section 17(1)(b) & (d) once it has knowledge of the Award. Section 17(1)(a) and (c) of Limitation Act may not even apply, if they are extended to Section 34, since they deal with a scenario where the application is "based upon" the fraud of the respondent or if the application is for "relief from the consequences of a mistake". Section 34 application is based on the award and not on the fraud of the respondent and does not seek the relief of consequence of a mistake.

> *44. In view of the above, we hold that once the party has received the award, the limitation period under Section 34(3) of the Arbitration Act commences. Section 17 of the Limitation Act would not come to the rescue of such objecting party."*

4(ii)(c) In ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer. Vs. Borse Brothers Engineers and Contractors Private Limited***[3] The Hon'ble Apex Court emphasizing the object sought to be achieved under the Arbitration Act and Commercial Courts Act i.e. the speedy resolution of disputes, held that the expression 'sufficient cause' is not elastic enough to cover long delays beyond the period provided in the appeal provision itself. The expression 'sufficient cause' is not itself a *loose panacea* for the ill of pressing negligent and stale claims. 'Sufficient cause' means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of facts and circumstances of the case or it cannot be alleged that the party has ' not acted diligently' or remained inactive. The expression 'Sufficient cause' should be given a liberal interpretation to ensure that substantial justice is done but only so long as negligence,

[3] (2021) 6 SCC 460

inaction or lack of bonafides cannot be imputed to the party concerned. Law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes. A result flowing from statutory provision is never an evil "Inconvenience is not" a decisive factor to be considered while interpreting a statute. Whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. The relevant portion of the judgment read as under:

> *"58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81, has held:*
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> > *"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude,*

which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] , Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

10. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it

giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. *The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*

> *"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."*

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

14. *In P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .*

15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*

Hon'ble Apex Court taking note of the law laid down in *Postmaster General and others Versus Living Media India Limited and another*[4] held that different yardstick for condonation of delay cannot be laid down merely because Government is involved. No special treatment can be accorded to the Government from the provisions of Section 34 of the Act. Paras relevant to the context are as under:-

> *"59. 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.7% ["Postmaster General"], as follows: (SCC pp. 573-74, paras 27-29)*
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> *"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.*
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> *28. Though we are conscious of the fact that in a matter of condonation of delay when there was*

[4] (2012) 3 SCC 563

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."

60. The decision in Postmaster General has been followed in the following subsequent judgments of this Court:

(i) State of Rajasthan v. Bal Kishan Mathur at paras 8-8.2;

(ii) *State of U.P. v. Amar Nath Yadav at paras 2-3;*

(iii) *State of T.N. v. N. Suresh Rajan at paras 11-13; and*

(iv) *State of M.P. v. Bherulal at paras 3-4.*

61. *In a recent judgment, namely, State of M.P. v. Chaitram Maywade, this Court referred to Postmaster General , and held as follows: (SCC pp. 668-69, paras 1-5)*

"1. The State of Madhya Pradesh continues to do the same thing again and again and the conduct seems to be incorrigible. The special leave petition has been filed after a delay of 588 days. We had an occasion to deal with such inordinately delayed filing of the appeal by the State of Madhya Pradesh in State of M.P. v. Bherulal in terms of our order dated 15-10-2020.

2. We have penned down a detailed order in that case and we see no purpose in repeating the same reasoning again except to record what are stated to be the facts on which the delay is sought to be condoned. On 5-1-2019, it is stated that the Government Advocate was approached d in respect of the judgment delivered on 13-11-2018 and the Law Department permitted filing of the SLP against the impugned order on 26-5-2020. Thus, the Law Department took almost about 17 months' time to decide whether the SLP had to be filed or not. What greater certificate of incompetence would there be for the Legal Department.

3. We consider it appropriate to direct the Chief Secretary of the State of Madhya Pradesh to look into the aspect of revamping the Legal

Department as it appears that the Department is unable to file appeals within any reasonable period of time much less within limitation. These kinds of excuses, as already recorded in the aforesaid order, are no more admissible in view of the judgment in Postmaster General v. Living Media (India) Ltd.

4. *We have also expressed our concern that these kinds of the cases are only "certificate cases" to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue. The object is to save the skin of officers who may be in default. We have also recorded the irony of the situation where no action is taken against the officers who sit on these files and do nothing.*

5. *Looking to the period of delay and the casual manner in which the application has been worded, the wastage of judicial time involved, we impose costs on the petitioner State of Rs 35,000 to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited within four weeks. The amount be recovered from the officer(s) responsible for the delay in filing and sitting on the files and certificate of recovery of the said amount be also filed in this Court within the said period of time. We have put to Deputy Advocate General to caution that for any successive matters of this kind the costs will keep on going up."*

4(ii)(d) In ***Pathpati Subba Reddy (died) by L.Rs. and***

others vs. Special Deputy Collector (LA)[5], in context of a matter arising under Section 54 of the Land Acquisition Act, it was held that even after establishment of sufficient cause for various reasons, condonation of delay can be refused depending upon the bonafide of a party. When mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, such delay ought not to be condoned on sympathetic grounds. The conclusion drawn by the Hon'ble Apex Court after considering several precedents in timeline, are as under: -

> *"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*
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> *(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
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> *(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
>
> *(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense*

[5] SLP (C) No. 31248 of 2018, decided on 08.04.2024 and 2024 SCC Online SC 513

whereas Section 5 has to be construed liberally;

iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) ***Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;***

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) ***Merits of the case are not required to be considered in condoning the delay; and***

(viii) ***Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision****."*

4(iii) In the instant case, since the objections have

been preferred beyond the period of three months under Section 34 (3) of the Act, therefore, in terms of the proviso attached thereto, it has to be considered as to whether the applicants/objectors were prevented by sufficient cause in not preferring the objections within the prescribed period of three months. The applicants are not just required to show sufficient cause for the period of twenty-seven days beyond the prescribed period of three months, they are mandated by the proviso to Section 34(3) of the Act to explain as to why the objections could not be preferred within the prescribed period of three months. The contention raised by the applicants/objectors that they are not required to explain the delay in not preferring the objections within the prescribed period, is not tenable. The word 'sufficient cause' figuring in proviso to Section 34(3) of the Act, in fact, relates to the reasons for not filing the objections within the prescribed period. The prescribed period is three months. It is only in case the assigned reasons reflect the bonafides of the applicants/objectors, constitute sufficient cause and the Court records its satisfaction to that an effect, only then the thirty days' period beyond the prescribed period of three

months' can be condoned and not otherwise.

4(iv) Examining facts of the present case in light of provisions of Section 34 of the Act and the law laid down on the subject, there is no escape from conclusion that the applicants/objectors have not been able to furnish any cause much less sufficient cause for condoning the delay in not filing their objections against the award within the prescribed period of three months. As noticed earlier, the award was passed by the learned Arbitrator on 20.02. 2023. The applicants/objectors received signed copy of the award on 20.02.2023 itself. First action in furtherance of filing of objections against the award, was taken by the applicants/objectors only on 11.04.2023. There is no whisper either in the application seeking condonation of delay or in the rejoinder thereto as to what stopped the applicants/ objectors from taking any action against the award w.e.f 20.02.2023 till 11.04.2023. No cause, reason much less sufficient one has been furnished by the applicants/ objectors for not filing the objections within the prescribed limitation period of three months. No case, therefore, is made out for condoning the delay beyond the prescribed period of

three months.

5. Conclusion

Applicants/objectors' contention that they are not required to explain reasons for the delay in not filing the objections under Section 34 of the Act during the prescribed period of three months and only the time taken for filing the objections in the available extended period of thirty days is to be explained, is a fallacious and misconceived notion. It is only on satisfaction of the sufficient cause shown by the applicants/ objectors for not filing their objections to the award within the prescribed period of three months under Section 34(3) of the Act that the delay can be condoned by the Court up to the extendable period of thirty more days. The moment the prescribed period of three months lapses without filing the objections, the applicants/objectors are mandated in law to furnish sufficient cause for the entire period of delay from the date of receipt of the award till the date of filing of objections. The limitation period commences from the date of receipt of the award. It is only upon demonstration of the sufficient cause for this entire period that the objections can be entertained up to the extendable

period of thirty days from date of the expiry of prescribed period of three months. It has already been held that in the facts of the given case, the applicants/objectors have miserably failed to justify the delay in filing the objections. No cause much less sufficient cause has been pleaded for not taking any action in furtherance of filing objections against the award in total block of about two months (50 days) within the prescribed limitation period of three months.

In view of above discussion, no case for condoning the delay is made out. Accordingly, the application is dismissed. Consequently, the appeal is also dismissed.

Pending miscellaneous application(s), if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

October 22, 2024
R.Atal