

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.679 of 2023

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1. The State of Bihar

2. The Executive Engineer, Durgawati Works Division, Chenari, District- Rohtas.

... .. Appellant/s

Versus

M/s Baba Hans Construction Pvt. Ltd. 162, Anandpuri, West Boring Canal Road,
P.S.- S.K. Puri, District- Patna- 800001.

... .. Respondent/s

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Acts/Sections/Rules:

- Sections 34, 37(1)(c) of the Arbitration and Conciliation Act, 1996
- Section 5 of Limitation Act, 1963

Cases referred:

- State of Bihar and Ors. v. Kameshwar Pd. Singh and analogous case reported in 2000 (3) PLJR (SC) 81
- State of Haryana v. Chandramani and Others reported in 1996 (3) SCC 132
- Spl. Tehsildar Land Acquisition, Kerala v. K. V. Ayisumma (Supreme Court case)
- Government of Maharashtra v. M/s Borse Brothers Engineer and Contractors Pvt. Ltd. 2021 vol. 6 SCC 460
- Majji Sannemma v. Reddy Sridevi, 2021 SCC Online SC 1260
- Ajay Dabra v. Pyare Ram, 2023 SCC Online SC 92
- Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heirs, 2024 SCC Online SC 489
- In Respondent: Cognizance for Extension of Limitation (Suo Moto Writ Application (C) No. 3 of 2020)
- State of M.P. v. Ramkumar Chaudhary, 2024 INSC 932
- Postmaster General v. Living Media India Ltd., 2012 (3) SCC 563
- State of Nagaland v. Lipok Ao (2005) 3 SCC 7852
- N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123
- Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157

- New India Assurance Co. Ltd. v. Smt. Keshar, AIR 1996 Raj. 28
- Union of India v. BESCO Ltd., 2024:DSC:9291:DB
- Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 644

Appeal - filed against the order whereunder application filed by the appellant under Section 34 of the Act at the admission stage was dismissed on the ground of limitation without giving benefit under Section 5 of Limitation Act, 1963. Application to condone delay in filing the present appeal has also been filed along with the Appeal.

Held - Appellant has shown laxity at different stages of the present case. The appellant had failed to file the application under Section 34 of the Act before the District Judge within the stipulated time period and had prayed for condonation of the delay of 516 days. Further, the appellant filed this appeal with application for condoning the delay of 129 days in filing the present Appeal. (Para 5)

Appellant has failed to show the 'sufficient cause' which prevented it from filing the application for appeal under Section 37 of the Act within the prescribed period. (Para 12)

Delay in filing of the appeal because of the slow movement of files within governmental bodies does not offer a "sufficient cause" for condoning the delay. (Para 13)

Although in cases involving the State and its agencies/instrumentalities sufficient time is taken in the decision-making process, no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest. (Para 14.iii)

Application for delay of condonation is rejected and hence appeal is dismissed as it is barred by limitation at the stage of admission itself. (Para 18)

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Versus

M/s Baba Hans Construction Pvt. Ltd. 162, Anandpuri, West Boring Canal Road, P.S.- S.K. Puri, District- Patna- 800001.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nadim Seraj, Advocate
Mr. Shailesh Kumar, Advocate
Mr. Afham Akhtar, Advocate
For the Respondent/s : Mr. Ramakant Sharma, Senior Advocate
Mr. Sourav Suman, Advocate
Mr. Pragati Patra, Advocate
Mr. Aalekhanand, Advocate
Mr. Sarveshwar Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

Date: 08-01-2025

The present Memo of appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act’), against the order dated 29.05.2023 passed in Civil Misc. Case No. 44 of 2021 by the Learned District Judge, Rohtas at Sasaram whereby and where- under the Learned Judge was pleased to dismissed the application filed by the appellant under Section 34 of the Act at the admission stage on the ground of limitation without giving benefit under Section 5 of Limitation Act, 1963.

2. This appeal is accompanied by an interlocutory application seeking condonation of delay of 129



days in filing of this appeal. At the very outset, learned counsel for the appellant submits that though the application inadvertently mentions delay of 129 days and the appeal is barred by 60 days. In support of the interlocutory application, learned counsel submits that the delay in filing of the appeal has occurred primarily because the file moves from field to headquarter/department and in the department also files move from the level of Assistant and it reaches up to the level of Joint Secretary/Secretary after crossing various officers. By placing reliance on the observation of the Hon'ble Supreme Court in the case of ***State of Bihar and Ors. v. Kameshwar Pd. Singh and analogous case*** reported in ***2000 (3) PLJR (SC) 81*** at para 11;

“..... Power to condone the delay in approaching the court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector Land Acquisition Anantnag & Anr. v. Mst. Katji & Ors. [1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life purpose of the existence of the institution of Courts. It was further



observed that a liberal approach is adapted on principle it is realized that:

“1. Ordinarily a litigant does not stand of benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ‘Every-day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? Doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non- deliberate delay.



5. *There is no presumption that, delay is occasionally deliberately or on account of culpable negligence or on account of mala fide. A litigant does not stand to benefit by resorting to delay.*

6. *It must be grasped that judiciary respected not an account of its power to legalize injustice to technical grounds but because it is capable of removing injustice and is expected to do so.....”*

2.i. The Hon’ble Supreme Court observed that certain amount of latitude within the permissible limit is permissible in case of examining the ‘sufficient cause’ of delay in filing appeal by the State. In the case of ***State of Haryana v. Chandramani and Others*** reported in ***1996 (3) SCC 132***, it is noticed that equally the State cannot be put on the same footing as an individual. It is also observed by the Supreme Court in the case of ***Spl. Tehsildar Land Acquisition, Kerala v. K. V. Ayisumma*** that liberal approach appreciating the grounds for delay by the State and meritorious matter may be heard on merit so that cause of justice is not defeated. He therefore, prays that by taking into account of details and considering the policy decision of State of Bihar involved in the present matter, it is



respectfully prayed that the delay consumed in the filing of the present appeal may be condoned on the ground that the official processes and the system of deliberation/opinion/approval up to the level of the Principal Secretary took some time.

3. On the other hand, learned senior counsel appearing on behalf of the respondent opposes the application for condonation of delay of 129 days by urging that the appellants failed to assign the 'sufficient cause' of delay in filing the Appeal on day-to-day basis and stated the reason for delay as primarily due to procedural delay as file moves to headquarter and department takes time in decision making and has to cross various stages and hence the administrative reason alone cannot be the reason for condoning the delay. He further submits that appellants have filed the condonation of delay application under the Letters Patent Appeal but the present matter is Miscellaneous Appeal and under wrong Section which shows their lack of awareness and seriousness about the matter. He contends that it is trite law that in a matter pertaining to the Arbitration and Conciliation Act as also those pertaining to the Commercial Courts Act, condonation of delay in filing an appeal can be granted by way of an exception and not by way of a rule. Furthermore, as held by the Hon'ble Apex Court merely



because appellant is a State, it cannot claim that a lenient view should be adopted for considering the condonation of delay as upheld by the Supreme court in recent judgment ***Government of Maharashtra v. M/s Borse Brothers Engineer and Contractors Pvt. Ltd. 2021 vol. 6 SCC 460***. Learned counsel for the respondent further submits that in the ***M/s Borse Brothers Engineer***, it has been held that different yardstick for condonation of delay cannot be applied for the government. The relevant extracts of paragraph no. 59 read 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., 2012 (3) SCC 563**”*

3.i. He further submitted that the Apex Court emphasizing the object sought to be achieved under the Arbitration Act and Commercial Courts Act i.e., the speedy resolution of disputes has held the expression ‘sufficient cause’ is not an 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 ill of pressing negligent and stale claims which shows the *lack lustre* approach in most callous and negligent manner. He therefore, prays that



the application be dismissed along with the appeal which is clearly barred by the limitation.

4. Having deeply studied and scrutinized the facts of the case and the materials on record, it is evident to note that the parties are *ad idem* that the delay in filing of the appeal is of 129 days. The relevant extracts from different paragraphs of the application wherein the respondent has mentioned sequence of the events. The same reads as under: -

09.07.20216	Work order and agreement.
23.07.2018	Contract rescinded by the Executive Engineer and forfeited the earnest money and security deposit under clause-3 of the SBD
30.07.2018 – 06.08.2018	Why the claimant should not be blacklisted for 10 years and further, claimant company was blacklisted for 10 years.
03.08.2018	Claimant preferred writ application bearing CWJC No. 15400 of 2018
23.08.2018	The writ application was allowed in the favour of the claimant by this Hon’ble Court. Relevant para-34 of the order.
06.09.2018	State preferred an L.P.A. bearing no. 1282 of 2018.
04.10.2018	In the order it was observed that this Court has not expressed anything on merit in favour of either party and the dispute between the parties is required to be adjudicated by the Arbitral Tribunal, as per the clause 25 of the Contract.
	Claimant approached the Supreme Court vide SLP (C) No. 28459 of 2018.
12.11.2018	The Hon’ble Supreme Court stated that “Having regard to the circumstances of the case, we consider it appropriate to uphold the order of the High Court directing the matter to be adjudicated by way of arbitration.” <i>The aforesaid arbitration shall be conducted by Hon’ble Mr. Justice Shiv Kirti Singh, former Judge of this Court. By consent of parties, the issue of justifiability of blacklisting will also be gone into by learned arbitrator. The petitioner shall be at liberty to</i>



	<i>apply for interim protection in respect of blacklisting.</i>
06.12.2018	<i>1st sitting of Arbitral tribunal was convened. Attended by representative and lawyers of both the parties and schedule was formulated.</i> On the same day claim was also filed along with the application seeking interim protection as liberty granted by the Hon’ble Supreme Court.
26.11.2019	An Arbitral Award passed by the Hon’ble Sole Arbitrator in favor of the claimant based on the claim submitted by the claimant and further also on the justifiability of blacklisting as stipulated in the order passed by the Apex Court.
Limitation period begins from: 26.11.2019	As per Section 34 (3)- 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: 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.
Limitation period ended on: 23.02.2020	In the instant matter, the limitation period of 90 days expired on 23.02.2020.
23.07.2021 (516 days delay)	Under Section 34 of the Arbitration and Conciliation Act, 1996 A Civil Miscellaneous Case No. 44 of 2021 was filed in the Court of District Judge, Rohtas at Sasaram.
29.05.2023	Order passed by the District Judge, Rohtas at Sasaram- <i>Dismissed at admission stage.</i> Relevant paras of the order- 8 to 11. <i>Submission made by the State-</i> That they have not received any proper notice regarding the appointment of arbitrator or arbitration proceeding. <i>Court finding-</i> Petitioner appeared before the Arbitrator and in their presence, award was passed. Supreme Court order dated 12.11.2018- appointment of arbitrator with the consent of the parties. Hence, no point of not having knowledge of the same. Learned District Judge, Sasaram also observed that the petition has been only filed to linger and harass the respondent (M/s Baba Hans Construction Pvt. Ltd.) and there is no ground to admit the case under Section 34 of the Arbitration and Conciliation Act, 1996. <ul style="list-style-type: none">• Civil Miscellaneous was dismissed on the ground:<ol style="list-style-type: none">1. Delay in filing the present application



	<div>2. Grounds taken up by them in the application was found not acceptable by the learned court after the due consideration.</div> <div>3. Hence, Civil Miscellaneous was dismissed on merit</div>
07.10.2023 Delay of 129 days	<div>Miscellaneous Appeal No. 679 of 2023 being filed by the State.</div> <div><ul style="list-style-type: none">Matter was filed after the prescribed limitation period.Hence, a defect was pointed out by the stamp reporter in the application on 04.11.2023State filed the condonation of delay application on 21.03.2024 (delay of 139 days) after pointing out defect.</div>

5. From a perusal of the aforesaid list of dates set out by respondent, I find that the appellant has shown laxity at different stages of the present case. The appellant had failed to file the application under Section 34 of the Act before the Learned District Judge, Rohtas within the stipulated time period and had prayed for condonation of the delay of 516 days. Further, the appellant filed this appeal on 04.10.2023 and IA No. 01 of 2024 on 21.03.2024 for condoning the delay of 129 days in filing the present Miscellaneous Appeal against the order dated 29.05.2023 passed in the Civil Misc. Case No. 44 of 2012 by the Learned District Judge, Rohtas, Sasaram.

6. At the outset, it is imperative to produce the relevant provision of law, Section 5 of Limitation Act, 1963 applicable in the instant case:

“5. Extension of prescribed period in certain



cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

“The Schedule”

<i>Description of Suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>116. Under the Code of Civil Procedure, 1908 (5 of 1908)</i> — <i>(a) to a High Court from any decree or order.</i> <i>(b) to any other court from any decree or order.</i>	<i>Ninety Days</i> <i>Thirty days.</i>	<i>The date of the decree or order.</i> <i>The date of the decree or order.</i>
<i>17. From a decree or order of any High Court to the same Court.</i>	<i>Thirty days.</i>	<i>The date of the decree or order.</i>

7. The legal position is that where a case has been presented in the Court beyond limitation, the appellant has to explain to the Court as to what was the ‘*sufficient cause*’ which prevented him from approaching the Court within limitation period. In *Majji Sannemma v. Reddy Sridevi, 2021*



SCC Online SC 1260, it was held by the Hon'ble Supreme Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigor when prescribed by statute. A reference can also be made to the decision of the Apex Court in **Ajay Dabra v. Pyare Ram, 2023 SCC Online SC 92**, wherein, it was held as follows:

*"13. This Court in the case of **Basawaraj v. Special Land Acquisition Officer [2013] 14 SCC 81** while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:*

"15. The law on the issue can be summarized 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 bonafide 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."

8. The above precedent thus emphasizes that the discretion to condone the delay has to be exercised judiciously based on the facts and circumstances of each case and that, the expression '*sufficient cause*' cannot be liberally interpreted, if based on the facts of the case it is evident that there has been negligence, inaction or lack of bonafides on the part of the petitioner. The term '*sufficient cause*' means that the party should not have acted in a negligent manner or there was a want of bonafide on the part of the petitioner in view of the facts and circumstances of the case.

9. In ***Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heirs, 2024 SCC Online SC***



489, it was in unequivocal terms observed by the Supreme Court that delay should not be excused as a matter of generosity and substantial justice should not be rendered at the cost of the opposite party. The relevant passage of the same is produced below:

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned.

26. The court owes a duty to first ascertain the bonafides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the



purpose of condoning the delay.

The Apex Court further held that:

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants."

10. From a perusal of the facts of the case as set out by the appellants, I find that the appellant filed the petition for setting aside the arbitral award on 23.07.2021. The arbitral award was passed on 26.11.2019 by the Hon'ble sole arbitrator. The counsel for appellant has relied on the decision of the Hon'ble Supreme Court in ***In Respondent: Cognizance for Extension of Limitation (Suo Moto Writ Application (C) No. 3 of 2020***) wherein the Apex Court held that the period from 15.03.2020 till 28.02.2022 shall be excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial and quasi-judicial proceedings and consequently the balance period of limitation as remaining on 03.10.2021, if any shall be available with effect from 01.03.2022. It is however pertinent to note here that the trial



court has rightly held that the period of limitation for filing the application under Section 34 of the Act had expired before the onset of the Covid-19 pandemic, i.e., on 23.02.2020 and thus the precedent will not be applicable in the instant case. The appellant showed sheer laxity in filing the Civil Misc. Petition before the District Judge, Rohtas, Sasaram and the same is dated to be filed on 23.07.2021. The plea of the appellant that the present case is covered by the judgment of the Apex Court in ***In Respondent: Cognizance for Extension of Limitation (Suo Moto Writ Application (C) No. 3/2020)*** is thus not tenable in law.

11. It has been observed by the Apex Court in ***State of M.P. v. Ramkumar Chaudhary, 2024 INSC 932***, that:

“Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events



*occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: **Ajit Singh Thakur Singh and Another v. State of Gujarat, AIR 1981 SC 733**).*

12. Applying the ratio laid down by the Apex Court to the present case, it is clear that the appellant has failed to show the ‘*sufficient cause*’ which prevented it from filing the application for appeal under Section 37 of the Act within the



prescribed period, i.e., before 01.09.2023. The appellant has not given any cogent and compelling reason to show as to why it couldn't file the application within the stipulated period and what was the sufficient cause which resulted in the delay.

13. Further, the contention of the counsel for the appellant that the delay in filing of the appeal had occurred because of the slow movement of files from field to headquarters/department and in the department also from the level of Assistant and up-to the level of Joint Secretary/Secretary after crossing various officers does not offer a “*sufficient cause*” for condoning the delay. The Apex Court in the case of ***Office of the Chief Post Master General and Ors. vs. Living Media India Ltd. & Anr. (supra)*** held as follows:

"12. 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. 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 bonafide, 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.

14. The observation speaks for itself that even with regard to Government Departments there is no blanket condonation of delay. The Court is to exercise its discretion judiciously. No organization can take advantage of its deliberate inaction and the facts and circumstances pleaded by the Appellant for the delay do not merit consideration. In ***State of Nagaland v. Lipok Ao***, the Apex Court referred to several precedents on the subject and observed that the proof of sufficient cause is a condition precedent for exercise of discretion vested in the Court: ***((2005) 3 SCC 7852, para 8)***

"8. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion."



14.i. In the same case the Court also took cognizance of the usual bureaucratic delays which take place in the functioning of the State and its agencies/instrumentalities and observed:

"13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause."

14.ii. Further in **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123**, the Apex Court held that:

"Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can



be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

14.iii. In the case of ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157***, the Supreme Court noted that although in cases involving the State and its agencies/instrumentalities sufficient time is taken in the decision-making process, no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will



cause injury to the public interest.

14.iv. In the instant matter it has been observed that appellants had sought condonation of delay of 516 days in filing the petition under Section 34 of the Act before the District Judge, Rohtas and on the petition being rejected at the stage of admission itself, the appellants showed utmost laxity in filing the present Civil Misc. Petition. The appellant have failed to show promptness and vigilance towards their duties. They have shown utter negligence in dealing with the matter. The appellant has failed to justify the sufficiency of the cause of the delay irrespective of length of the delay. The impugned order of the District Judge, Rohtas was passed on 29.05.2023, but the appellant applied for a certified copy of the order one month after the date of order, i.e. on 24.06.2023 and was received on 28.06.2023. What was the cause for not taking prompt action has not been put forth by the appellant. Further the present appeal has been filed on 04.10.2023, i.e. after a delay of 129 days. It has been found that the application filed for condonation of delay and the affidavits of the appellant are conspicuously silent on the following important points:

(a) No explanation whatsoever has been given as to why the application for certified copies of the award were not



filed till 24.06.2023 despite the fact that their application under Section 34 was already dismissed by the District Judge on the same grounds, i.e. filing of petition after the prescribed period.

(b) The name of the person who was having custody of the record of the arbitral award and the person responsible for filing the present application has not been disclosed.

(c) No explanation is given as to why the Misc. application was filed on beyond the prescribed period of limitation.

(d) Even though the State has engaged a number of lawyers to conduct cases on its behalf, nothing has been said as to what operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

15. The present matter is a clear case of negligence, non-seriousness and carelessness on the part of the Appellant-State. Procedural impediments in the government machinery are not a '*sufficient cause*' for condoning the delay in light of the fact that already the District Judge had rejected their petition under Section 34 of Arbitration Act on the stage of admission as it was barred by limitation. In the case of *New*



India Assurance Co. Ltd. v. Smt. Keshar, AIR 1996 Raj. 28, the Rajasthan High Court dismissed an application for condonation of delay of a mere 16 days in filing appeal by the Insurance Company on grounds of gross-negligence and non-explanation of each day's delay and absence of sufficient cause. In the case of *Union of India v. BESCO Ltd., 2024:DSC:9291:DB* the Hon'ble Delhi High Court also dismissed the appeal under Section 37 of the Act as to no sufficient cause was given to show the delay of 112 days and accordingly the said appeal was rejected. In the present matter too, it is observed that no explanation has been given for each-day's delay in filing the present petition.

16. The observations of the Hon'ble Supreme Court in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 644*, is also relevant in the instant case. In the ratio, while referring to various authorities on condonation of delay the following points inter alias were summarized as guiding principles for such condonation;

"21. From the aforesaid authorities the principles that can broadly be culled out are:

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or



litigant is to be taken note of.

21.5. (v) Lack of bonafides imputable to a Party seeking condonation of delay is significant and relevant fact.

21.7. (vii) The concept of liberal approach en-capsules reasonableness and it cannot be allowed a totally unfettered free play.

21.9. (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose other side unnecessarily to face such a litigation.

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

[emphasis supplied]

17. The rules of limitation are not meant to

destroy the rights of parties. They are meant to see that parties



do not resort to dilatory tactics, but seek their remedy promptly. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is founded on public policy. It is enshrined in the maxim interest *republicae ut sit finis litium* (it is for the general welfare that a period be put to litigation).

18. In the light of aforesaid provisions of law and the observations of the Hon'ble Supreme Court in various judgements, I am of the considered view that the explanation furnished by the appellant does not show any “*sufficient cause*” whatsoever for condonation of delay of 129 days in filing of the appeal, which was otherwise required to be filed within 90 days as prescribed under Section 37 of the Arbitration and Conciliation Act also read with the Schedule, Second Division – Appeal (Article no. 116) of the Limitation Act, 1963. The same has also been observed by the Supreme Court in ***Government of Maharashtra v. M/s Borse Brothers Engineer and Contractors Pvt. Ltd. (supra) para 23***. In the instant case, apart from the gross negligence shown by the appellant in late filing the appeal petition, it is seen that the appellant preferred a Letters Patent Appeal instead of a Civil Misc. Appeal and that too under the wrong provisions of the law. This attitude again exemplifies the



callous attitude of the appellant and is evident of nothing more than gross negligence and carelessness. As laid down by various precedents of the Apex Court it is clear that the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors in condoning delay. In such a case, the IA no. 1 of 2024 of the appellant does not state the grounds which would constitute “*sufficient cause*” for condonation of delay under Section 5 of Limitation Act, 1963. The interlocutory application is hence rejected and thus the present appeal is also dismissed as it is barred by limitation at the stage of admission itself.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

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