

# State Of U.P. And Others vs M/S Harish Chandra India Limited on 2 July, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

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THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:106455

Court No. 40

FIRST APPEAL FROM ORDER DEFECTIVE No. - 425 of 2013

STATE OF U.P. AND OTHERS

v.

M/S HARISH CHANDRA INDIA LIMITED

For the Appellant : Sri Rishi Kumar, Additional Chief Standing  
Counsel

For the Respondent : Sri Mohd. Arish, Advocate holding brief of Sri  
Ashish Mishra, Advcoate

Last heard on May 30, 2024

Judgement on July 2, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. This is an application under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') preferred against the order dated August 1, 2012 passed by the District Judge, Agra.

## FACTS

2. I have laid down the factual matrix of the instant lis below:

a. An agreement was entered into by the State of Uttar Pradesh (hereinafter referred to as the 'Appellant No. 1') and M/s Harish Chandra India Limited (hereinafter referred to as the 'Respondent') for 'excavation of foundation of supporting structures of second stage pump house of Chambal Dal Project, Pinahat Agra'.

b. Disputes and differences arose between the parties in relation to the aforesaid agreement which were referred to arbitration. The Arbitrator gave an award of Rs. 67,42,240/- in favour of the Respondent on July 19, 2009. If the award remained unpaid beyond four months from the date of delivery of the award, the same was to carry simple interest @ 16% from the date of award to the date of actual payment.

c. On May 17, 2010, the Appellants filed an application under Section 34 of the Act challenging the aforesaid award dated July 19, 2009 along with an application for condonation of delay under Section 5 read with Article 137 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act').

d. The District Judge, Agra vide order dated August 1, 2012 rejected the application filed by the Appellants under Section 5 read with Article 137 of the Limitation Act along with the application under Section 34 of the Act.

e. Aggrieved by the order dated August 1, 2012, the Appellants have preferred the instant appeal under Section 37 of the Act before this Court on March 13, 2013.

#### CONTENTIONS BY THE APPELLANTS

3. Learned counsel appearing for the Appellants has made the following submissions before this Court:

a. Delay if any is beyond the control and is procedural in nature. The delay is not deliberate and intentional and is liable to be condoned in the interest of justice.

b. In the facts and circumstances, it is therefore necessary in the interest of justice that this Court may be pleased to condone the delay filing the instant appeal before this Court and treat the same within time.

#### CONCLUSION AND ANALYSIS

4. I have heard the learned counsel appearing for the parties and perused the materials on record.

5. It is evident from the factual matrix of the instant appeal that the same has been filed with a delay of more than 120 days. The impugned order was passed on August 1, 2012 while the instant appeal has been filed on March 13, 2013 that is beyond the period of 120 days.

6. The Hon'ble Supreme Court in *N.V. International v. State of Assam* reported in (2020) 2 SCC 109 espoused on the period of limitation for filing of an appeal under Section 37 of the Act. Relevant paragraphs are extracted below:

"3. Having heard the learned counsel for both sides, we may observe that the matter is no longer *res integra*. In *Union of India v. Varindera Constructions Ltd.* [*Union of India v. Varindera Constructions Ltd.*, (2020) 2 SCC 111], this Court, by its judgment and order dated 17-9-2018 [*Union of India v. Varindera Constructions Ltd.*, (2020) 2 SCC 111] held thus:

"1. Heard the learned counsel appearing for the parties.

2. By a judgment dated 19-4-2018 in *Union of India v. Varindera Constructions Ltd.* [*Union of India v. Varindera Constructions Ltd.*, (2018) 7 SCC 794], this Court has in near identical facts and circumstances allowed the appeal of the Union of India in a proceeding arising from an arbitral award.

3. Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10-4-2013 [*Union of India v. Varindera Constructions Ltd.*, 2013 SCC OnLine Del 6511] 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 selfsame proceeding under Section 37 should be covered by the same drill.

4. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri* [*Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 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.

5. 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. The special leave petitions stand disposed of accordingly.

Pending applications, if any, also stand disposed of."

4. We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following *Lachmeshwar Prasad Shukul* [*Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned.

7. In *State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.* reported in (2021) 6 SCC 460, the Hon'ble Supreme Court propounded that a delay under the Act can only be condoned by way of an exception and not by way of rule. Relevant paragraph is extracted herein:

"63. 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(1-A) 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."

8. What emerges from the wisdom of the Hon'ble Supreme Court is that being a legislation for speedy disposal delay under the Act can only be condoned if sufficient cause is made out and not otherwise. The principle that delays in arbitration matters under the Act can only be condoned on sufficient cause and as an exception is rooted in the very essence of why arbitration is chosen as a method of dispute resolution. The need for timely resolution is paramount in arbitration, especially given its primary objective to provide a faster and more efficient alternative to traditional litigation. The Act was legislated with the intent to streamline the process, minimize court interference, and facilitate quick resolution of disputes, particularly in commercial contexts where time is often a critical factor. Delaying arbitration can have profound consequences, disrupting business operations, causing financial loss, and undermining the trust in the arbitration process. The Hon'ble Supreme Court of India, through various landmark judgments, has underscored that the timelines prescribed under the Act are to be adhered to strictly.

9. Arbitration is designed to be a time-efficient process, which is a significant advantage over traditional court proceedings that are often bogged down by procedural formalities and backlogs. This efficiency is crucial in the commercial world, where prolonged disputes can lead to uncertainty, financial losses, and a significant waste of resources. The Act aims to provide a framework that ensures disputes are resolved swiftly, reducing the time parties spend in litigation and allowing them to focus on their business operations. By setting strict timelines, the Act seeks to prevent the arbitration process from becoming as protracted as court cases. However, the Act also recognizes that there can be genuine circumstances where adhering to these timelines might not be possible. In such cases, the provision for condoning delays exists, but it is clearly stated that this can only happen if sufficient cause is shown. This balance between rigidity and flexibility ensures that while the process remains fast, it does not become unjustly stringent.

10. The term "sufficient cause" is not explicitly defined in the Act, which means its interpretation has largely been shaped by judicial pronouncements. In general, sufficient cause refers to a legitimate reason that prevents a party from acting within the prescribed time limits. This reason must be beyond the control of the party and not due to negligence or inaction. Courts, when determining whether sufficient cause exists, consider various factors such as the nature of the delay, the reasons provided, the conduct of the parties, the impact of the delay on the arbitration process and the other party, and whether the delay was beyond the control of the party seeking condonation.

11. However, since the time limit for filing appeals under Section 37 of the Act is 90 days, and a delay can only be condoned up to a period of 30 days, an appeal filed after 120 days, no matter how sufficient the cause for delay is, cannot be allowed under any circumstance by the Court. The rationale behind such stringent timelines is rooted in the principles of finality and efficiency, which are paramount in arbitration. The limitation period serves as a deterrent against undue delays and encourages parties to act promptly, thereby ensuring that the arbitration process remains expeditious. By setting a clear and rigid timeframe, the law seeks to prevent the arbitration process from becoming protracted and bogged down by procedural delays, which would undermine its core

advantage over traditional litigation. This approach aligns with the broader legislative intent to make arbitration a preferred method of dispute resolution by offering a faster and more efficient alternative to court proceedings. The 90-day period, followed by a maximum 30-day extension for condonation of delay, is thus a carefully calibrated timeframe that balances the need for promptness with a limited degree of flexibility to accommodate genuine hardships.

12. In the instant case, the Appellants had filed the instant appeal under Section 37 of the Act on March 13, 2013 while the impugned order was passed on August 1, 2012. There is a delay of 224 days in filing the instant appeal which is beyond the prescribed period of 90 days, and also the extendable period of 30 days, and thus the instant appeal sacrifices itself on the altar of limitation.

13. For the sake of argument, even otherwise, if the instant appeal had been filed within the time period, the same would have failed on merits since the application under Section 34 of the Act filed by the Appellants was evidently time barred and as such was rightly dismissed by the District Judge, Agra.

14. While the award in the instant case was passed on July 19, 2009, the application under Section 34 of the Act was filed only on May 17, 2010 that is beyond the statutory time limit.

15. The District Judge, Agra had squarely dealt with the issue of limitation in its order dated August 1, 2012 as follows:

"I am not in agreement with the submission of the learned counsel for the applicants because the said Act is applicable to those proceedings where no limitation is provided.

On the contrary, under Section 34 (3) of the Act, the following law has been embodied to make it clear:-

"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."

The Hon'ble Apex Court in 'A.I.R. 2001 Supreme Court 4010, Union of India vs. M/s Popular Construction Co.' dealt the situation in detail and has observed as under:-

"The provisions of Section 5 Limitation Act, 1963, are not applicable to an application challenging an award, under Section 34 and as such there was no scope for assessing sufficiency of the cause for the delay beyond the period prescribed in proviso to

Section 34. The crucial words in Section 34 are 'but not thereafter' used in the proviso to sub-section (3). This phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would, therefore, bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso would render the phrase 'but not thereafter' wholly otiose. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. The history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act."

It has been further observed as under:-

"By virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provision of Section 36. It is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow." Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

The above observation of the Hon'ble Apex Court makes it clear that Section 5 of the Limitation Act is not applicable to these proceedings and that they are to be governed by section 34(3) of the Arbitration and Conciliation Act, 1996.

In the circumstances, the application to condone the delay in filing the objections against the arbitral Award is not legally maintainable and this court is not competent to condone the delay occasioned in filing the objections against the arbitral Award.

Coming to the factual side of the controversy, it is evident that the delay has occasioned due to the latches and inaction and lethargy of the applicant himself. They had the knowledge of the award within time but failed to file the petition in time rather they wasted their time in consultation and departmental proceedings.

In the circumstances, the application 4C under Section 5 read with Article 137 of the Limitation Act is liable to be rejected and is rejected accordingly."

16. In Esha Agarwal and Ors. -v- Ram Niranjana Ruia reported in 2023 SCC OnLine Cal 98, I had dealt with the question of limitation under Section 34(3) of the Act as follows:

"6. The question of limitation takes centre stage in the present application and needs to be adjudicated upon first and foremost. With respect to limitation for filing a challenge to an arbitral award, Section 34(3) of the Arbitration and Conciliation Act, 1996 provides that an application under the section cannot be made after 'three months have elapsed from the date on which the party making that application had received the arbitral award'. The courts can condone the delay within a further period of thirty days, provided sufficient cause is present, but not 'thereafter'. I believe the term 'thereafter' used in the section does not need any further interpretation. A plain reading of the said section and the proviso makes it as clear as the sky on a summer morning that courts cannot condone a delay beyond the extendable period of thirty days provided in the section.

7. It is necessary at this point to make reference to the recent decision of the apex court in Mahindra and Mahindra Financial Services Limited v. Maheshbhai Tinabhai Rathod reported in (2022) 4 SCC 162 wherein the restricted scope of the courts' power to condone the delay in case of an application under Section 34 was reiterated by the Supreme Court. Relevant portions have been extracted below -

9. The scope available for condonation of delay being self-contained in the proviso to Section 34(3) and Section 5 of the Limitation Act not being applicable has been taken note by this Court in its earlier decisions, which we may note. In Union of India v. Popular Construction Co. [Union of India v. Popular Construction Co., (2001) 8 SCC 470] it has been held as hereunder:

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendable by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process" [Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996.]. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:



'5. Extent of judicial intervention.-Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.'

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Subsection (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, subsection (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which reads as under:

'36. Enforcement.-Where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Civil Procedure Code, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.' This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.'

8. While I express my sympathy towards the petitioner, my judicial hands are curtailed by the law, as mentioned above. There is no runway of merit for the present application to land on. The present application has been filed forty-two days after the prescribed period of limitation under the Act, and given that the court has the power to condone a delay of only up to thirty days, the present application fails and is bound to be sacrificed at the altar of limitation."

17. What is evident is that the language used in Section 34(3) of the Act leaves no room for condoning the delay beyond what is permissible. The Applicants' application under Section 34 of the Act having been filed beyond the statutory limitation period (prescribed period of 3 months + extendable period of 30 days) could not have been admitted by the District Judge, Agra. Therefore, even on merits, the Appellants had no case before this Court.

18. In light of the aforesaid, the instant appeal under Section 37 of the Act is dismissed as time barred. There shall be no order as to the costs.

19. Before I part with this judgment, I would like to sound a word of caution.

20. The government often cites bureaucratic and procedural delays as reasons for not filing an appeal within the prescribed time limits. While these reasons might seem compelling due to the complex and often cumbersome nature of governmental operations, the law applies to all parties in the same manner, and any delay by the government cannot be treated as special or condoned beyond what is permissible under the Act. This principle is crucial for maintaining the rule of law, ensuring equality before the law, and preserving the integrity and efficiency of the arbitration process. The idea that the government should not be given preferential treatment in legal matters is fundamental to the concept of justice, which dictates that all parties, regardless of their status or resources, must adhere to the same legal standards and timelines. Bureaucratic and procedural delays are a common issue within government bodies due to various factors such as the hierarchical decision-making processes, the need for multiple approvals, and the often extensive internal review procedures. While these factors can indeed slow down the process of filing appeals, they cannot be accepted as valid reasons for extending the statutory time limits prescribed under the Act. The law is designed to ensure that arbitration remains a swift and efficient method of dispute resolution, and allowing exceptions for governmental delays would undermine this objective.

21. The justice system is based on the notion that all individuals and entities, regardless of their status, should be treated equally. Granting the government special privileges in the form of extended time limits would violate this principle and create a perception of bias. Such a perception could undermine public confidence in the legal system, as it would suggest that the government is above the law and not subject to the same rules as everyone else. Treating government delays differently would set a dangerous precedent. If the courts were to condone delays by the government based on bureaucratic and procedural reasons, it would open the door for other parties to seek similar leniency, thereby eroding the strict timelines established by the Act. This would defeat the purpose of having a clear and rigid timeframe for filing appeals and could lead to a significant increase in delayed appeals, ultimately undermining the efficiency and finality of the arbitration process.

22. While the government may face certain administrative and procedural challenges, it must take adequate measures to ensure that appeals are filed within the prescribed time limits. Private parties, who often operate with fewer resources and less bureaucratic infrastructure than government entities, are required to comply with the same strict timelines. If the government were allowed to bypass these timelines due to internal delays, it would place private parties at a distinct disadvantage, undermining the principle of fairness that is central to the arbitration process. This would also create an environment where private parties might lose faith in the arbitration process, viewing it as biased in favor of the government.

23. Therefore, it is incumbent upon the government to create a specialized procedure to expedite the filing of appeals within the prescribed time period. It is the taxpayers' money that the government deals with, and such a cavalier and lackadaisical approach in preferring appeals cannot be allowed. The efficient handling of legal matters, including the timely filing of appeals, is a crucial aspect of governance that directly impacts public trust and the proper utilization of public resources. Given the significant volume of legal cases that government departments and agencies are involved in, it is essential that the government establishes robust mechanisms to ensure compliance with statutory timelines, particularly under the Act.

24. One of the key elements of such specialized procedures could be the creation of dedicated legal teams within each government department. These teams can be responsible for monitoring legal matters and ensuring that all necessary actions, including the filing of appeals, are taken within the prescribed time limits. By having a dedicated team in place, the government can ensure that there is a clear line of accountability and that legal matters are handled with the urgency they deserve. These teams should consist of experienced legal professionals who are well-versed in the relevant laws and procedures. They should also have the authority to make quick decisions and act promptly to avoid unnecessary delays.

25. In addition to dedicated legal teams, the government could also implement robust tracking and monitoring systems to oversee the progress of legal cases. These systems could provide real-time updates on the status of each case, including key deadlines and any actions that need to be taken. By having a centralized tracking system, the government can ensure that all stakeholders are aware of the critical timelines and can take timely action to comply with them. Such systems can also help identify any potential bottlenecks or delays in the process, allowing for swift corrective action to be taken.

26. Furthermore, the government can also establish clear guidelines and protocols for the handling of legal matters. These guidelines should outline the steps that need to be taken at each stage of the process, including the filing of appeals, and should provide clear instructions on how to comply with statutory timelines. By having standardized procedures in place, the government can reduce the risk of errors and ensure that all legal matters are handled in a consistent and efficient manner. These guidelines can also include provisions for regular training and capacity-building programs for government officials involved in legal matters, ensuring that they are fully aware of their responsibilities and the importance of adhering to statutory deadlines.

27. Accordingly, a direction is issued upon the Principal Secretary (Law), Government of Uttar Pradesh, to take necessary steps, in order to avoid the filing of appeals beyond the statutory time limits, by the Government. The Principal Secretary (Law) is also directed to submit a report before this Court on the action taken in this regard within 6 months from the date of this judgment. The Principal Secretary (Law) may take assistance of a committee of experts as may be required.

28. Registrar (Compliance) is directed to communicate this order to the Principal Secretary (Law) forthwith.

02.07.2024 Kuldeep (Shekhar B. Saraf, J.)