

State Of U.P. Thru. Secy. Estate Deptt. ... vs Smt. Anjali Gupta on 30 May, 2025

Author: Rajan Roy

Bench: Rajan Roy

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:33282-DB

Court No. - 2

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

Appellant :- State Of U.P. Thru. Secy. Estate Deptt. Lko. And Another

Respondent :- Smt. Anjali Gupta

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Shreya Prakash, Sachin Garg

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

Order on Application for Condonation of Delay (1) Heard.

(2) The present appeal has been filed by the State authorities under Section 37 (2)(A) of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015, interdicting the judgment and order dated 14.02.2025 passed by the Presiding Officer, Commercial Court No.1, Lucknow, by which Arbitration Case No. 79 of 2021 : State of Uttar Pradesh and another Vs. Smt. Anjali Gupta, filed under Section 34 of the Arbitration and Conciliation Act, 1996 has been dismissed.

(3) The facts as available from records of the present case is that respondent-Anjali Gupta, sole

proprietor of M/s Anjali Motors, was awarded two Government contracts for vehicle repair and maintenance; one pertaining to the period commencing from 25.05.1999 to 29.06.2000 and the other related to the period from 30.06.2000 to 29.06.2001.

(4) Dispute arose regarding payment of the aforesaid work order between the parties. The respondent had agitated this dispute in Writ Petition No. 1505 (M/B) of 2003 : M/s Anjali Motors Vs. State of U.P. and others, wherein a Co-ordinate Bench of this Court, vide order dated 08.01.2007, having regard to claims and counter-claims of the two parties, referred the dispute subsisting between the parties to an arbitrator for settlement of the accounts. The learned Sole Arbitrator framed inasmuch as five issues and awarded Rs.50,69,642/- in favour of the respondent vide award dated 22.01.2008.

(5) Aggrieved by the award dated 22.01.2008, the appellants had filed Original Suit No. 78 of 2008 Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act, 1996'), which was dismissed by the District Judge, Lucknow vide order dated 18.09.2012. Not satisfied with the order dated 18.09.2012, appellants preferred First Appeal From Order No. 1208 of 2012 : State of U.P. and another Vs. Smt. Anjali Gupta and a Co-ordinate Bench of this Court, vide order 18.03.2013, while allowing the FAFO, set-aside the aforesaid award and remitted back the matter to the learned Arbitrator on same terms and conditions as settled by the earlier order dated 08.01.2007 with direction to make an award regarding all the subsisting disputes between the parties for settlement of accounts.

(6) Against the aforesaid order dated 18.03.2013, the respondent had filed Special Leave to Appeal (Civil) No. 16154 of 2013, which was dismissed by the Apex Court on 26.02.2014. Thereafter, the Sole Arbitrator, accepted the claim of the respondent and rejected the counter-claim of the appellants vide award dated 02.08.2018, against which the appellants had filed Arbitration Case No. 79 of 2021 under Section 34 of the Act, 1996 before the Commercial Court No.1, Lucknow, which was dismissed vide order dated 14.02.2024. It is this order dated 14.02.2024, which has been challenged in the present appeal.

(7) A close examination of the present appeal would reveal that this appeal has been filed by the appellants with a delay of about 141 days from the date of the impugned judgment and 129 days as per the affidavit of condonation of delay. The reasons for delay has been mentioned in paragraphs 2 to 7 of the affidavit accompanying the application for condonation of delay, which reads as under :-

"2. That as regards the facts and circumstances under which the instant Arbitration Appeal could not be filed earlier, it is relevant to submit here that the copy of the Judgment and order dated 14.02.2024 passed by the learned Commercial Court No. 1, Lucknow in Arbitration Petition No. 79 of 2021-State of U.P. and another Versus Anjali Gupta was received on 04.03.2024.

3. That immediately after receiving the copy of the Judgment and Order dated 14.02.2024 the matter was referred to the Department of Law and Justice, who advised to receive legal opinion of the learned Chief Standing Counsel. Accordingly,

the Appellant No. 2 vide his letter dated 2.03.2024 referred to the learned Chief Standing Counsel, High Court, Lucknow Bench, Lucknow, who vide letter No.499 dated 09.05.2024 recorded his opinion.

4. That thereafter the State Government referred the matter to the Department of Law and Justice, who vide Government Order dated 11.06.2024 granted permission for the First Appeal against the Judgment and order dated 14.02.2024 passed by the learned Commercial Court No. 1, Lucknow in Arbitration Petition No. 79 of 2021-State of U.P. and another Versus Anjali Gupta.

5. That thereafter the learned Chief Standing Counsel assigned the matter to one of the learned Standing Counsel, on 09.07.2024, who on being contacted by the paiokar drafted the first appeal in part and advised the paiokar to make available legible copies of the pleadings before the Commercial Court No. 1, Lucknow. The learned Standing wrote a letter No. 10250/Civil dated 15.07.2024 to the Assistant State Estate Officer, U.P. Government Rajya Sampatti Anubhag-3 for making available the copies of the Memo of Arbitration Petition No. 79 of 2021, reply/objection filed by the Claimant-respondent Smt. Anjali Gupta and also the delay explanation regarding delay occurred in filing of the First Appeal.

6. That the Assistant State Estate Officer, U.P. Government vide letter dated 19.07.2024 made available delay explanation and the other required record.

7. That thereafter in two sittings respectively on 25.07.2024 and 05.08.2024 the memo of First Appeal, Application for condonation of delay with affidavit, application for interim relief, Affidavit of service and dates and events were drafted and now the First appeal is being filing without any further delay after completing it in all respect."

(8) Before proceeding further, we deem it apt to discuss the law of limitation holding the ground for filing an appeal under Section 37 of the Act, 1996 read with Section 13 of the Act, 2015. Section 37 of the Act, 1996 deals with general provision for filing appeal, which inter alia provides as under : -

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

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

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

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

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

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

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

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

(9) Apparently, the Arbitration and Conciliation Act, 1996 does not provide any specific limitation for filing such appeals under Section 37 of the Arbitration and Conciliation Act, 1996 as it provides for filing an objection/application against the Arbitral Award as per section 34 (3) of the said Act. However, Section 43 of the Arbitration and Conciliation Act, 1996 provides that the Limitation Act, 1963 ('hereinafter referred to as 'Limitation Act') shall apply to arbitrations as it applies to proceedings in Court. The Hon'ble Supreme Court in the case of Consolidated Engineering Enterprises v. Irrigation Department: (2008) 7 SCC 169] held that where the Limitation Act prescribes a period of limitation for appeals or applications to any Court and the special Act does not prescribe any period of limitation, then the limitation prescribed in the Limitation Act will be applicable along with Sections 4 to 24 thereof, unless they are expressly excluded by the special Act. Thus, by necessary implication, the period for preferring an appeal under Section 37 of the Act, 1996 would be as per Article 116 or Article 117 of the Schedule provided for in the Limitation Act. Suffice to say, that Articles 116 and 117 of the Schedule of the Limitation Act provide for a limitation period of 90 days for filing an appeal from any other Court to a High Court and a period of 30 days for filing an intra appeal before the High Court, i.e., order passed by a Single Bench to the Division Bench, provided the law provides for such an appeal before the Division Bench. Having quoted and mentioned Article 116 and 117 of the Schedule of the Limitation Act, applicable ordinarily for the aforesaid nature of appeals, it goes without saying that in case of any delay in preferring any such appeals, Section 5 of the Limitation Act provides for extension of the prescribed limitation period, provided the applicant satisfies the Court that there was a 'sufficient cause' for such delay.

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

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

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

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be,

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

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).] (2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

(11) Thus, the limitation for preferring of an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 in view of the Commercial Court Act, is sixty days only and, of course, the provisions of Section 5 of the Limitation Act would apply for condonation of delay. However, there is a caveat, inasmuch as the Hon'ble Supreme Court in *Union of India v. Varindera Constructions Ltd.*: (2020) 2 SCC 111, while adjudicating the similar issue of limitation for filing of an appeal under Section 37 of the Act, 1996, has engrafted a limitation period of 120 days from the date of passing of the order and held that any further delay beyond 120 days cannot be allowed, which in a way ruled out the provisions of Section 5 of the Limitation Act in preferring an appeal under Section 37 of the Act, 1996. Hon'ble Supreme Court while noting that since as per Section 34 of the Act, 1996, application has to be filed within a maximum period of 120 days, which also included a grace period of 30 days and nothing more, therefore, an appeal filed from the same should also be covered by the same ratio, has observed in the following words:

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

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

(12) Thus, the Hon'ble Supreme Court declined to condone the delay of 142 days in filing of appeal in Varindera Construction Ltd. (supra) by holding that a maximum period of 120 days is available to a party filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and to the same effect is another judgment of the Apex Court in M/s N. V. International v. the State of Assam and Ors. : (2020) 2 SCC 109, wherein also the Apex Court reiterated the position as stated in Virendra Constructions Ltd. (supra) and declined to condone a delay of 189 days from the 90 days in filing an appeal under Section 37 of the Act, 1996. The Apex Court in the said judgment also placed emphasis upon the main object of the Act, i.e., speedy disposal of arbitral disputes and held that any delay beyond 120 days cannot be condoned.

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

(14) Law laid down in both the cases i.e Varindera Construction Ltd. (supra) and M/s N.V. International (supra) came up for consideration before a three-Judge Bench of the Apex Court in Government of Maharashtra Vs M/s Borse Brothers Engineers & Contractors Pvt. Ltd. : 2021 SCC OnLine SC 233, wherein the Apex Court noted the conflicting position vis-a-vis Consolidated Engineering Ltd (supra) and taking into consideration the provisions of Commercial Courts Act, 2015 and decision Consolidated Engineering Ltd. (supra) held that if the specified value of the subject matter is INR 3,00,000.00 or more, then an appeal under Section 37 of the Act must be filed within 60 days from the date of the order as per Section 13 (1A) of the Commercial Courts Act. However, in those rare cases, where the specified value is for a sum less than INR 3,00,000.00 then the appeal under Section 37 of the Act, 1996 would be governed by Articles 116 and 117 of the Schedule of the Limitation Act, as the case may be. The Hon'ble Supreme Court in the said case has held that Section 37 of the Act, 1996 when read with Section 43 of the Act, 1996 and Section 29(2) of the Limitation Act, makes it clear that Section 5 of the Limitation Act will apply to the appeals filed under Section 37 of the Act, 1996 and in holding the said applicability, the Apex Court noted with affirmative that Section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Act, 1996 and merely provides for a limitation period of 60 days from the date of the judgment or order appealed against, without going into whether delay beyond this period can or cannot be condoned. However, the Apex Court also noted that condonation of delay, although allowed, cannot be seen in complete isolation of the main objective of the Act, i.e. speedy disposal of disputes. In the light of the same, the Apex Court observed that the expression 'sufficient cause' under Section 5 of the Limitation Act is not elastic enough to cover long delay and merely because sufficient cause has been made out, there is no right to have such delay condoned. The Apex Court further held that only short delay can be condoned by way of an exception and not by the way of rule, and that too, only when the party acted in a bona fide manner and not negligently. Thus, the Apex Court has inter alia held in Government of Maharashtra Vs M/s Borse Brothers Engineers & Contractors Pvt. Ltd. (Supra) as follows :-

"61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90

days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

(15) Now, we consider to the application filed by the appellants seeking condonation of delay in filing of the present appeal under Section 37 of Act, 1996.

(16) Keeping in mind the aforesaid, on perusal of the condonation of delay application and supporting affidavit filed by the appellants, this Court finds that "sufficient cause" has not been made out by the appellants to condone the delay of 141 days in filing the appeal.

(17) Dealing with the identical situation, recently, this Court has dismissed Appeal Under Section 37 of Arbitration and Conciliation Act, 1996 Defective No. 9 of 2025 : The Project Director, Uphsdp, Lucknow And Ors. Vs. Commercial Court No. 1 Lucknow Thru Its Presiding Officer and Ors. vide judgment and order dated 07.05.2025, on the ground of limitation.

(18) In view of the aforesaid, application for condonation of delay is hereby rejected. Consequently, the present appeal is also dismissed.

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

Order Date :- 30.5.2025

Ajit