

Binod Kumar Bawri & Ors vs M/S Dalmia Cement (Bharat) Ltd & Anr on 8 January, 2025

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
ARB. A. (COMM.) 56/2024, I.A. 44932/2024

BINOD KUMAR BAWRI & ORS.

Through: Mr. Sacchin Puri (S
with Mr. Praveen Ku
Vinayak Bhandari, M
Gupta, Ms. Teesta M
Bhola, Mr. Dhan Sin
Raj, Mr. Nishal Kau

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M/S DALMIA CEMENT (BHARAT) LTD & ANR....

Through: Mr. Rajiv Nayar, S

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

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08.01.2025

I.A. 44933/2024 (delay)

1. By way of the present application filed under Section 5 of the Limitation Act, the appellants seek condonation of delay of 13 days in filing the accompanying appeal filed under Section 37 (2)(B) of the Arbitration and Conciliation Act, 1996.

2. Notably, the subject appeal arises out of arbitral proceedings pending before the Arbitral Tribunal (hereafter, the 'AT') in relation to the disputes pertaining to Shareholders Agreement dated 16.1.2022 (as amended on This is a digitally signed order.

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Vide the impugned order dated 19.07.2024, AT while allowing an application filed under Section 17 of the A&C Act by respondent No.1, has directed the petitioners to deposit 5,20,34,013 shares as well as 10,95,000 shares, both in the Escrow-2 account.

3. As the respondent has raised a preliminary objection on the maintainability on account of limitation, the subject appeal having been filed with a delay of 13 days, the Court sets out to deal with the same.

4. While the appellant would contend that justifiable reasons exist for it to satisfactorily explain the delay, the respondent has doubted the reasons and also the period of delay which according to them is 49 days.

5. As per petitioners' case, the impugned order passed on 19.07.2024 was received through email from AT on 20.07.2024 and the subject appeal was filed on 01.10.2024, thus a delay of 13 days. The delay is sought to be explained by citing two reasons, the first being 'change of counsel' and second non-availability of petitioner No.1, who is stated to be the GPA holder of petitioner Nos. 2-13. It is stated that petitioner No.1 was not available in India as he had travelled to USA from 13.08.2024 to 18.09.2024. After return of the petitioner No.1, the counsel could take appropriate instructions for filing of the subject appeal. Lastly, it is submitted that the delay was bona fide and not intentional in nature.

6. Pertinently, though Section 37 of the A&C Act itself does not prescribe any time period for filing the appeal, the Supreme Court in *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Pvt. Limited* reported as (2021) 6 SCC 460 while addressing the same issue, This is a digitally signed order.

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"25. When the Commercial Courts Act is applied to the aforesaid appeals, given the definition of "specified value" and the provisions contained in sections 10 and 13 thereof, it is clear that it is only when the specified value is for a sum less than three lakh rupees that the appellate provision contained in section 37 of the Arbitration Act will be governed, for the purposes of limitation, by Articles 116 and 117 of the Limitation Act. Shri Deshmukh's argument that depending upon which court decides a matter, a limitation period of either 30 or 90 days is provided, which leads to arbitrary results, and that, therefore, the uniform period provided by Article 137 of the Limitation Act should govern appeals as well, is rejected. It is settled that periods of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed. In *Boota Mal v. Union of India*, (1963) 1 SCR 70, this Court referred to this aspect of the case, as follows:

"Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in Nagendranath v. Suresh [AIR(1932) PC 165] and General Accident Fire and Life Assurance Corporation Limited v. Janmahomed Abdul Rahim [AIR (1941) PC 6] . In the first case the Privy Council observed that "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide". In the latter case it was observed that "a limitation Act ought to receive such a construction as the language in its plain meaning imports ... Great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases".

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27. Even in the rare situation in which an appeal under section 37 of the Arbitration Act would be of a specified value less than three lakh rupees, resulting in Article 116 or 117 of the Limitation Act applying, the main object of the Arbitration Act requiring speedy resolution of disputes would be the most important principle to be applied when applications under section 5 of the Limitation Act are filed to condone delay beyond 90 days and/or 30 days depending upon whether Article 116(a) or 116(b) or 117 applies. As a matter of fact, given the timelines contained in sections 8, 9(2), 11(4), 11(13), 13(2)-(5), 29A, 29B, 33(3)-(5) and 34(3) of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/01/2025 at 21:50:00 the Arbitration Act, and the observations made in some of this Court's judgments, the object of speedy resolution of disputes would govern appeals covered by Articles 116 and 117 of the Limitation Act. Xxx

33. The bulk of appeals, however, to the appellate court under section 37 of the Arbitration Act, are governed by section 13 of the Commercial Courts Act. Sub-section (1A) of section 13 of the Commercial Courts Act provides the forum for appeals as well as the limitation period to be followed, section 13 of the Commercial Courts Act being a special law as compared with the Limitation Act which is a general law, which follows from a reading of section 29(2) of the Limitation Act. Section 13(1A) of the Commercial Courts Act lays down a period of limitation of 60 days uniformly for all appeals that are preferred under section 37 of the Arbitration Act"

7. In the aforementioned decision, the Supreme Court further considered the expression "sufficient cause" in relation to condonation of delay in context of appeals filed under Section 37, and observed 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:

"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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/01/2025 at 21:50:00 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 This is a digitally signed order.

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"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. (See *Popat and Kotecha Property v. SBI Staff Assn.* [(2005) 7 SCC 510] , *Rajender Singh v. Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil v. Jalgaon Medium Project* [(2008) 17 SCC 448 :(2009) 5 SCC (Civ) 907] .)

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." (emphasis supplied) This is a digitally signed order.

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8. The Supreme court also cited with approval, amongst others, its following observations in case of *Ramlal v. Rewa Coalfields* reported as (1962) 2 SCR 762:-

"62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 as follows:

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

9. After a detailed and exhaustive analysis, the Supreme court while outlining the parameters to condone delay beyond the specified period of 90 days, 30 days, 60 days, as the case may be only by way of an exception and not by way of a rule, the relevant observations are extracted as under:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/01/2025 at 21:50:01 "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...."

10. Coming to the facts of the present case, admittedly, bearing in mind the specified value of the subject matter, the limitation period of 60 days was available to the petitioners to file the subject appeal. The 'log information' placed on record by the Registry reflects that the subject appeal came to be filed on 01.10.2024. Computing 60 days from the date of impugned order, there is delay of 13 days in filing of the subject appeal.

11. As discernible from the above, in a case where a party has acted in good faith and without negligence, the Supreme Court has held that a brief delay beyond the prescribed time can be excused at the Court's discretion. With regards to as to what constitutes as "sufficient cause" in the context of condoning delay in filing appeals under Section 37 of the Act, this Court finds it appropriate to refer to the case of Union of India, through Principal Chief Materials Manager v. Incom Cables (Pvt) Ltd., reported as (2022) SCC OnLine DEL 2641. The relevant extract is reproduced as under:-

"7. Thus, "sufficient cause" means adequate and enough reason which prevented a person from approaching a court within limitation. The party seeking condonation of delay should not be found to be negligent or for want of bonafides nor should it have been not diligent nor inactive in pursuing its case. The Supreme Court also held that the test for condonation of delay cannot be different for the Government. All parties are treated to be equal before the law."

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12. Notably, the delay involved in the present case is of a short period of 13 days. While respondent has claimed that the petitioners have engaged a new counsel soon after passing of the impugned order, the petitioners have additionally claimed that petitioner No.1, who is the authorised person on behalf of petitioner Nos. 2 to 13, was not available in the country for a considerable period of time i.e., from 13.08.2024 to 18.09.2024, as a result of which adequate instructions could not be obtained by the counsel to draft and file the appeal. In addition, due consideration is also given to the time taken by the newly engaged counsel to go through the complete arbitral records. The application is duly accompanied by the affidavits filed by the counsel as well as petitioner No.1. In the present facts and circumstances, one cannot conclude that the petitioners have acted in a deliberate and intentional manner or with any mala fide.

Though respondent has placed reliance on the decision of Division Bench of this Court in Union of India v. Besco Limited (Wagon Divison) in FAO(OS)(COMM) 22/2024 dated 27.11.2024. A perusal of said decision would show that the delay involved was of 112 days. The Division Bench further observed that the explanation tendered was sufficient enough to condone the delay.

13. In light of the facts and circumstances of the case, as well as the duration of the delay in filing the appeal, this Court is of the opinion that there is a valid reason for the delay and that "sufficient cause" has been demonstrated. Therefore, the delay of 13 days in filing the appeal is hereby excused under Section 5 of the Limitation Act, and the applicant/appellant is granted the benefit of this provision.

14. The application is disposed of in the above terms.

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MANOJ KUMAR OHRI, J JANUARY 8, 2025 js This is a digitally signed order.

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