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**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**(Under Article 136 of the Constitution of India)**

**SPECIAL LEAVE PETITION (C) NO. OF 2024**

**IN THE MATTER OF:-**

MONGIA STEEL LIMITED ...PETITIONER

VERSUS

SALUJA STEEL & POWER PRIVATE LIMITED ...RESPONDENT

**OFFICE REPORT ON LIMITATION**

1 The Petition is within Limitation.

2 The Petition is barred by time and there is delay of \_\_\_\_\_ days in filing the same against order dated 19.07.2024 and petition for Condonation of \_\_\_\_\_\_ delay has been filed.

3 There is delay of \_\_\_\_\_\_\_ days in Refiling the petition and petition for Condonation of \_\_\_\_\_\_days in Re-filing has been filed.

**BRANCH OFFICER**

New Delhi

Filed On: 18.10.2024

**A-1**

**PROFORMA FOR FIRST LISTING**

Section -\_\_\_\_\_\_\_\_\_

The Case Pertains to (Please Tick / Check the correct box):

Central Act: (Title): **COMMERCIAL COURT ACT**

Section**: SECTION - 13**

Central Rule: (Title): **NA**

Rule No (s): **NA**

State Act: **N.A.**

Section: **N.A.**

State Rules: (Title) **NA**

Rule No(s): **NA**

Impugned Interim Order: (Date): **NA**

Impugned Final Order/ Decree: (Date): **19.07.2024**

High Court (Name): **Hon’ble High Court of Jharkhand at Ranchi**

Names of Judges: **HMJ Chief Justice & HMJ Sujit Narayan Prasad,J.**

Tribunal/Authority: (Name): **NA**

**1.** Nature of Matter**:**- Civil Criminal 

**2.**(a) Petitioner / Appellant No.1: **Mongia Steel Limited**

(b) E-mail I.D.: **NA**

(c) Mobile Phone Number: **NA**

**3.**(a) Respondent No.1: **Saluja Steel & Power Private Limited**

(b) E-mail I.D.:**NA**

(c) Mobile Phone Number: **NA**

**4.**(a) Main Category Classification: **18**

(b) Sub Classification: **1807**

**5.** Not to be listed before: **NA**

**A-2**

**6.** (a) Similar disposed of matter with citation, if any, & case details: **NO SIMILAR MATTER DISPOSED OF**

(b) Similar pending matter with case details: **NO SIMILAR**

**MATTER PENDING**

**7.** Criminal Matter: **No**

(a) Whether accused / Convict has surrendered: **NA**

(b) FIR No: **NA**  Date:  **NA**

(c) Police Station: **NA**

(d) Sentence Awarded:  **NA**

(e) Period of sentence undergone including period of detention/custody undergone**: NA**

**8.** Land Acquisition Matter: **NA**

(a) Date of section 4 notification: **NA**

(b) Date of section 6 notification: **NA**

(c) Date of section 17 notification: **NA**

**9.** Tax Matters: State the tax effect: **NA**

**10.** Special Category (First Petitioner / appellant only): **NA**

Senior Citizen>65 years SC/ST Woman/Child Disabled Legal aid Case In custody 

**11.** Vehicle Number (in case of Motor Accident Claim matters): **NA**

Date: 18.10.2024 AOR for Petitioner(s)/ Appellant(s)

Name: Rashmi Singh

Registration No: 2132

E-mail: [rashmisingh@lawzeus.com](mailto:rashmisingh@lawzeus.com)

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**(Under Article 136 of the Constitution of India)**

**SPECIAL LEAVE PETITION (C) NO. OF 2024**

(Against the impugned final judgment and order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023)

**WITH PRAYER FOR INTERIM RELEIF**

**IN THE MATTER OF:-**

MONGIA STEEL LIMITED ...PETITIONER

VERSUS

SALUJA STEEL & POWER PRIVATE LIMITED ...RESPONDENT

**PAPER BOOK**

(*FOR INDEX PLEASE SEE INSIDE*)

**ADVOCATE FOR THE PETITIONER: RASHMI SINGH**

**RECORD OF PROCEEDINGS**

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**SYNOPSIS**

The present Special Leave Petition seeks to challenge the propriety of the Order dated 19.07.2024 passed by a Hon'ble Division Bench of the High Court of Jharkhand at Ranchi (hereinafter referred to as “the impugned Order), whereby the Hon’ble Division Bench was pleased to dismiss an appeal preferred by the petitioner, registered as Commercial Appeal no. 08 of 2023 (hereinafter referred to as “the said appeal”), consequent upon dismissal of an application preferred by the petitioner under Section 5 of the Limitation Act, 1963, registered as I.A. 11047 of 2023 (hereinafter referred to as “the said application”), seeking condonation of delay in preferring the said appeal. The said appeal had been preferred challenging the propriety of the Order dated 15.03.2022 passed by the Court of first instance, dismissing the suit instituted by the petitioner, registered as Commercial Suit no. 63 of 2020 (hereinafter referred to as "the said suit"), upon allowing an application preferred by the respondent under Order 7 rule 11 read with Section 151 of the Code of Civil Procedure, 1908.

The chronological sequence of events leading to the present petition is enumerated hereunder:

A suit was instituted by the petitioner against the respondent under Sections 29 and 134 of the Trade Marks Act, 1999 before the Court of the Judicial Commissioner at Ranchi, registered as Title Suit no. 6 of 2015 (hereinafter referred to as "the initial suit").The same upon transfer to the file of the learned Judge, Commercial Court, Ranchi was renumbered as Commercial Case no. 06 / 2015.

Citing formal defects in the plaint and incorporation of improper prayers therein, the petitioner filed an application under Order XXIII Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908, registered as Misc. Civil Application no. 105 of 2020, seeking permission to withdraw the initial suit and institute a fresh suit.

Vide Order dated 29.09.2020, the Hon'ble Court allowed Misc. Civil Application no. 105 of 2020, resulting in Commercial Case no. 06 / 2015 being dismissed as withdrawn with liberty granted to the petitioner to file a fresh suit subject to the conditions specified therein.

In pursuance of the liberty so granted, the petitioner instituted the said suit (Commercial Suit no. 63 of 2020) on 23.12.2020.

In connection with the said suit, an application purporting to be under Order VII rule 11 of the Code of Civil Procedure, 1908 was preferred by the respondent, which was allowed vide Order dated 15.03.2022, thereby resulting in dismissal of the said suit.

Aggrieved by the Order dated 15.03.2022, the petitioner approached the Hon'ble High Court of Jharkhand at Ranchi by way of an appeal under Section 13 of the Commercial Courts Act, 2015, since registered as Commercial Appeal no. 8 of 2022 (hereinafter referred to as "the earlier appeal").

The Hon'ble High Court, vide Order dated 06.04.2023, dismissed the earlier appeal with liberty unto the petitioner to file a fresh appeal with proper averments and documents annexed thereto, within a period of thirty days, therefrom.

In compliance with the liberty so granted, the petitioner preferred the said appeal (Commercial Appeal no. 08 of 2023) on 06.04.2023.

The Registry, opining that there had occasioned a delay of 356 days in preferring the said appeal and insisting on an application being filed for condonation thereof, prompted the petitioner to file the said application under Section 5 of the Limitation Act, 1963, seeking condonation of the purported delay of 356 days in preferring the said appeal.

Vide the impugned Order, a Hon’ble Division Bench of the said High Court was pleased to dismiss the said application, citing that the said application was not fit to be allowed due to the absence of sufficient explanation as also in view of the provisions of Order XXIII rule 2 of the Code of Civil Procedure and upon placing purported reliance on the judgment rendered by this Hon’ble Court in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460. Consequently the said appeal was also dismissed.

The Order impugned is perverse and vitiated by errors of jurisdiction as well as by improper exercise of jurisdiction in as much as :-

a) The Hon’ble Division Bench proceeded to adjudicate the said application on the purported premise that the grant of liberty unto the petitioner, vide the Order dated 06.04.2023 passed in the earlier appeal, to file a fresh Commercial Appeal, with proper averments and documents annexed therewith, within a period of 30 (thirty) days therefron, if so advised did not “mean that the limitation will not be the issue if the appeal will be filed within the period of 30 days”. Such a premise is fallacious;

b) The Hon’ble Division Bench failed to appreciate that when the earlier Appeal was entertained and Orders were passed in connection therewith, it could safely be presumed that the earlier appeal was filed within the prescribed period of limitation and / or the delay, even if there was any, was condoned by the Hon’ble Division Bench and that when the earlier Hon’ble Division Bench r granted liberty unto the petitioner to file a fresh appeal, within a period of thirty days therefrom, question of the petitioner providing further explanation for the delay caused, if any, did not arise;

c) The impugned Order was premised on the opinion of the Hon’ble Division Bench that the “filing of the appeal without documents” could not be said to be a “diligent approach” of the petitioner, rather it would be said to be a “negligent approach”, when such non filing of proper documents and lack of proper pleadings in the earlier appeal were mere procedural irregularities and could not be attributed to any negligence on the part of the petitioner;

d) The purported reliance upon the provisions engrafted in Order XXIII rule 2 of the Code of Civil Procedure was utterly misconceived, as the Hon’ble Division Bench failed to cognizance of the fact that though delay in preferring a suit cannot be condoned, under any circumstances, delay in preferring an appeal may be condoned on sufficient cause being shown;

e) The purported reliance on Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460 was unwarranted, given that the said precedent was distinguishable on facts and circumstances of the present case;

f) The Hon’ble Division Bench failed to appreciate that in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460, this Hon’ble Court had been pleased to negate the pea for condonation of delay in the three matters that it was is seisin of, on the premise that (i) “There is no explanation worth the name contained in the condonation of delay application” (ii) “explanation falls woefully short of making out any sufficient cause” and (iii) “there was no sufficient cause whatsoever to condone such a long delay” in filing the appeal and in refiling the same. In stark contrast thereto, the petitioner had filed the said appeal in terms of the solemn Order dated 06.04.2023 passed in the earlier appeal, within the period prescribed therein;

g) The Hon’ble Division Bench adopted a pedantic approach while adjudicating the said application when a liberal, pragmatic, justice-oriented, non-pedantic approach ought to have been resorted to while dealing with an application for such nature, regard being had to the fact that Courts are not supposed to legalise injustice but are obliged to remove injustice

In such conspectus, it is apparent that the Hon'ble Division Bench has misconstrued the facts of the case, misapplied the relevant law, and misdirected itself in passing the impugned Order.

The Order impugned in the said appeal was an Order by virtue whereof the suit instituted by the petitioner, complaining of infringement of its Trademark, was dismissed by the Court of first instance, upon allowing an application under Order VII rule 11 of the Code of Civil Procedure, 1908, filed by the respondent, on extraneous considerations. The learned Court of first instance could not have, in the facts and circumstances of the present case, dismissed the suit instituted by the petitioner. The petitioner sought to test the propriety of such order of dismissal before the Court of Appeal, with intent to have an opportunity to ventilate its grievances. However, the Court of Appeal below, vide the impugned Order nipped such an endeavour of the petitioner.

The Order precludes the petitioner from having its grievances adjudicated on merits and permits the respondent to continue the alleged infringement of the petitioner's trademark, causing irreparable prejudice and detriment to the petitioner.

In light of the foregoing submissions, it is humbly prayed that this Hon'ble Court may be pleased to grant special leave to appeal against the impugned Order and pass such other orders as this Hon'ble Court may deem fit and proper in the interests of justice

**LIST OF DATES**

| **DATE** | **EVENTS** |
| --- | --- |
| 22.06.2015  10.09.2020  29.09.2020  23.12.2020  13.08.2021  15.03.2022  14.05.2022  - 06.06.2022  07.06.2022  06.04.2023  02.05.2023  15.05.2023  19.07.2024  17.10.2024 | Trademark Suit no. 06 of 2015 (renumbered as Commercial Case no. 06 / 2015 upon transfer to the Commercial Court, Ranchi) instituted by the Petitioner  A true copy of the plaint of Trademark Suit No. 06 of 2015 (renumbered as Commercial Case no. 06 / 2015 upon transfer to the Commercial Court, Ranchi) is annexed herewith and marked as **Annexure – P - 1 (at Page no. \_\_\_\_\_ to \_\_\_\_\_\_ )** to this SLP.  Application under Order XXIII Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908 registered as Misc. Civil Application No. 105 of 2020 preferred by the petitioner seeking “permission to withdraw” the Commercial Case No. 06 / 2015 (initially Trademark Suit no. 6 of 2015) and “allow” the petitioner “to institute a fresh suit for the subject matter of the suit”.  A true copy of the application under Order XXIII Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908, registered as Misc. Civil Application No. 105 of 2020 is annexed herewith and marked as **Annexure – P - 2 (at Page no. \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_)** to this SLP.  Misc. Civil Application no. 105 of 2020 allowed. Commercial Case no. 06 / 2015 dismissed as withdrawn with liberty to file a fresh suit subject to the conditions mentioned therein.  A true copy of the Order dated 29.09.2020 passed in Misc. Civil Application No. 105 of 2020 in Commercial Case No. 06 of 2015 is annexed herewith and marked as **Annexure – P - 3 (at Page no. \_\_\_\_\_\_ to \_\_\_\_\_\_\_)** to this SLP.  Commercial Suit No. 63 of 2020 instituted before the Commercial Court, Ranchi  A true copy of the plaint of Commercial Suit No. 63 of 2020 is annexed herewith and marked as **Annexure – P – 4 (at Page no. \_\_\_\_\_\_ to \_\_\_\_\_\_\_\_)** to this SLP.  Application under Order VII rule 11 of the Code of Civil Procedure, 1908 filed by the Respondent in connection with Commercial Suit no. 63 of 2020.  A true copy of the Application under order VII rule 11 of the CPC, 1908 filed by the respondent in Commercial Suit No. 63 of 2020 is annexed herewith and marked as **Annexure - P - 5 (at Page no. \_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_)** to this SLP.  Application under Order VII rule 11 of the Code of Civil Procedure, 1908 filed by the Respondent allowed. Commercial Suit no. 63 of 2020 dismissed.  A true copy of the Order dated 15.03.2022 passed in Commercial Suit No. 63 of 2020 is annexed herewith and marked as **Annexure – P - 6 (at Page no. \_\_\_\_\_\_ to \_\_\_\_\_\_\_)** to this SLP.  Annual Summer vacation in the High Court of Jharkhand at Ranchi  Commercial Appeal no. 8 of 2022 filed.  A true copy of the Commercial Appeal No. 08 of 2022 is annexed herewith and marked as **Annexure – P – 7 (at Page no. \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_)** to this SLP.  Commercial Appeal no. 08 of 2022 filed by the Petitioner dismissed with liberty unto the petitioner to file a fresh Commercial Appeal, with proper averments and documents annexed therewith, within a period of 30 (thirty) days, if so advised.  A true copy of the order dated 06.04.2023 passed in Commercial Appeal No. 08 of 2022 is annexed herewith and marked as **Annexure – P - 8 (at Page no. \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_)** to this SLP.  Commercial Appeal no. 08 of 2023 filed.  A true copy of the Commercial Appeal No. 08 of 2023 is annexed herewith and marked as **Annexure – P – 9 (at Page no. \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_)** to this SLP.  Application under Section 5 of the Limitation Act bearing I.A. 11047 of 2023 filed, pursuant to instructions from the Registry.  A true copy of the application under section 5 of the Limitation Act is annexed herewith and marked as **Annexure- P- 10 (at Page no. \_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_)** to this SLP.  Application under Section 5 of the Limitation Act bearing I.A. 11047 of 2023 dismissed. Consequently Commercial Appeal no. 08 of 2023 dismissed on the ground of the same being barred by and under the laws of limitation.  Hence the Present Special Leave Petition. |

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CIVIL) NO. OF 2024**

(Arising out of against the impugned final judgment and order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023)

**IN THE MATTER OF:-**

| **BETWEEN :** | **POSITION OF PARTIES** | |
| --- | --- | --- |
|  | IN THE  HIGH COURT | IN THIS  COURT |
| Mongia Steel Limited having its registered office at Room No. 226, Kamalalaya Centre, 156A, Lenin Sarani, Kolkata- 700013, West Bengal through its Director Gunwant Singh Mongia alias Gunwant Singh Saluja. | Petitioner | Petitioner |
| **VERSUS** |  |  |
| Saluja Steel and Power Private Limited, having its registered office at Netajee Chowk, Bhandaridih, P.O. + P.S. Giridih, District – Giridih- 815301, Jharkhand. | Respondent | Respondent |

**PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA**

To

The Hon’ble Chief Justice of India

and his Companion Justices of the

Hon’ble Supreme Court of India

The humble petition of the

above named Petitioners:

**MOST RESPECTFULLY SHOWETH:**

1. The present Special Leave Petition seeks to challenge the propriety of the Order dated 19.07.2024 passed by a Hon'ble Division Bench of the High Court of Jharkhand at Ranchi, whereby the Hon’ble Division Bench was pleased to dismiss an appeal preferred by the petitioner, registered as Commercial Appeal no. 08 of 2023, consequent upon dismissal of an application preferred by the petitioner under Section 5 of the Limitation Act, 1963, registered as I.A. 11047 of 2023, seeking condonation of delay in preferring the said appeal. The said appeal had been preferred challenging the propriety of the Order dated 15.03.2022 passed by the Court of first instance, dismissing the suit instituted by the petitioner, registered as Commercial Suit no. 63 of 2020, upon allowing an application preferred by the respondent under Order 7 rule 11 read with Section 151 of the Code of Civil Procedure, 1908..
2. **QUESTIONS OF LAW**

The following questions of law arise for consideration in the present case:-

1. Whether an appeal preferred by a litigant, in terms of a liberty granted to it by a competent Court of law, permitting such litigant to file such appeal, within a stipulated period could be dismissed as being barred by and / or under the laws of limitation, if such appeal is filed and / or preferred within such period?
2. Whether judicial propriety and / or decorum permits a co - ordinate Bench to comment upon and / or disturb the findings and / or prior directions issued by another Bench?
3. Whether an appeal being entertained and orders being passed therein, would imply that the delay, if any, as had occasioned in preferring the said appeal, had been condoned?
4. Whether non filing of proper documents and lack of proper pleadings in an appeal be termed as procedural irregularities?
5. Whether non filing of proper documents and lack of proper pleadings in an appeal could be attributed to any negligence on the part of a litigant, when such litigant had engaged a learned Advocate to take appropriate steps to prefer the said appeal, on his / her / its behalf?
6. Whether a litigant could be made to suffer and / or be penalized for any delay caused in doing a particular thing within the time limit prescribed there for, owing to circumstances beyond the control of such litigant?
7. Whether the provisions engrafted in Order XXIII rule 2 of the Code of Civil Procedure, 1908 have any manner of application in the case of an appeal?
8. Whether a liberal, pragmatic, justice-oriented, non-pedantic approach ought to be resorted to by Courts, while dealing with an application for condonation of delay?
9. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned final judgment and order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023.

1. **DECLARATION IN TERMS OF RULE 5:**

The Annexures produced along with the Special Leave Petition are true copies of the pleadings / documents which formed part of the record of the case in the Court below against whose order the leave to appeal is sought for in this petition.

1. **GROUNDS OF APPEAL**
2. For that the Hon'ble Division Bench in the Court below seriously erred in law and in facts and acted illegally and with material irregularity in passing the impugned Order;
3. For that the Hon'ble Division Bench in the Court below was wholly wrong and unjustified in dismissing the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023 and in consequently dismissing the appeal, preferred by the petitioner;
4. For that the Hon'ble Division Bench in the Court below was wholly wrong and unjustified in passing the impugned Order, on the purported premise that the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023, was not fit to be allowed due to the absence of sufficient explanation as also in view of the provisions of Order XXIII rule 2 of the Code of Civil Procedure and upon placing purported reliance on the judgment rendered by this Hon'ble Court in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460;
5. For that the Hon'ble Division Bench in the Court below was equally wrong and unjustified in failing to appreciate that in view of an earlier Order dated 06.04.2023, passed by a co-ordinate Division Bench, which granted liberty to the petitioner to file a fresh Commercial Appeal, with proper averments and documents annexed therewith, within a period of 30 (thirty) days therefrom, if so advised, the appeal preferred by the petitioner, on 02.05.2024, was within time and not barred by and/or under the laws of limitation;
6. For that the Hon’ble Division Bench in the Court below seriously erred in law in proceeding to adjudicate the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023, on the purported premise that the grant of liberty to the petitioner to file a fresh Commercial Appeal, with proper averments and documents annexed therewith, by a co – ordinate Bench, vide an earlier Order dated 06.04.2023, within a period of 30 (thirty) days therefrom, did not “mean that the limitation will not be the issue if the appeal will be filed within the period of 30 days” and in failing to appreciate that the said Order could not have been interpreted in any manner other than to mean that no issue of limitation would arise if petitioner were to prefer a fresh appeal, within a period of thirty days from 06.04.2023;
7. For that the Hon’ble Division Bench in the Court below seriously erred in law in failing to appreciate the well settled principle of law that a Court does not pass an infructuous Order and / or direction;
8. For that the Hon'ble Division Bench in the Court below seriously erred in law in failing to appreciate the well-settled principle of law that a co-ordinate Bench can neither comment nor disturb any findings or directions issued by another Bench;
9. For that the Hon'ble Division Bench in the Court below was equally wrong and unjustified in failing to appreciate that when the earlier Appeal, being Commercial Appeal no. 8 of 2022 was entertained and Orders were passed in connection therewith, it could safely be presumed that the earlier appeal was filed within the prescribed period of limitation and / or the delay, even if there was any, was condoned by the said Hon’ble Bench and as such question of the petitioner providing further explanation for the delay caused, if any, did not arise and that such facts were sufficient to explain the delay, if any, as had occasioned in preferring Commercial Appeal no. 8 of 2023;
10. For that the Hon'ble Division Bench in the Court below seriously erred in law in holding that the “filing of the appeal without documents” could not be said to be a “diligent approach” of the petitioner, rather it would be said to be a “negligent approach” and in failing to appreciate that such non filing of proper documents and lack of proper pleadings in the earlier appeal, being Commercial Appeal no. 8 of 2023, were mere procedural irregularities and could not be attributed to any negligence on the part of the petitioner;
11. For that the Hon'ble Division Bench in the Court below was equally wrong and unjustified in failing to appreciate that the petitioner, having engaged a learned Advocate to take appropriate steps to prefer the earlier appeal, being Commercial Appeal no. 8 of 2022, on its behalf, was legitimately entitled to expect that the said learned Advocate would file the appeal in the manner prescribed, by annexing the relevant documents and incorporating the necessary pleadings and accordingly, the petitioner could not be penalized and/or made to suffer on account of any irregularity on such score and/or in this regard;
12. For that the Hon'ble Division Bench in the Court below seriously erred in law in proceeding to adjudicate the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023, on extraneous considerations;
13. For that FOR THAT the Hon’ble Division Bench in the Court below seriously erred in law in proceeding to adjudicate the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023 by placing purported reliance upon the provisions engrafted in Order XXIII rule 2 of the Code of Civil Procedure;
14. For that the Hon'ble Division Bench in the Court below seriously erred in law in proceeding to adjudicate the application under Section 5 of the Limitation Act, 1963, on the purported premises that "granting liberty to file an appeal within the period of 30 days does not mean that the limitation will not be the issue if the appeal will be filed within the period of 30 days" and that the provisions of the Code of Civil Procedure "contains a provision that the period of limitation is to be counted in case of liberty having been granted to approach the court and the period of limitation will be counted from the date of judgment/decree";
15. For that the Hon'ble Division Bench in the Court below failed to exercise the jurisdiction vested in it by law in failing to take cognizance of the settled principles regarding condonation of delay and in particular the principle that the length of delay would not be a dissuading factor for condonation thereof, if the same had been properly explained;
16. For that the Hon’ble Division Bench in the Court below failed to exercise the jurisdiction vested in it by law in failing to take cognizance of the fact that though delay in preferring a suit cannot be condoned, under any circumstances, delay in preferring an appeal may be condoned on sufficient cause being shown;
17. For that the purported reliance placed by the Division Bench in the Court below upon the judgment rendered by this Hon’ble Court in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460, while proceeding to adjudicate the application under Section 5 of the Limitation Act, 1963, preferred by the petitioner, since registered as I.A. 11047 of 2023, is misplaced in as much as the said precedent was distinguishable on facts;
18. For that the Hon’ble Division Bench in the Court below seriously erred in law in failing to appreciate the ratio of the judgment passed by this Hon’ble Court in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460, in its proper perspective and in being swayed by the period of delay (which the Registry computed and calculated as 356 days) and in deciding not to condone the same in view of the fact that in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460, this Hon’ble Court had refused to condone the delay of 75 days, 131 days and 200 days;
19. For that the Hon’ble Division Bench in the Court below seriously erred in law in relying upon the judgment rendered by this Hon’ble Court in Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 SCC 460, totally oblivious of the observations made by this Hon’ble Court in the three matters, which this Court was in seisin of, viz. (i) “There is no explanation worth the name contained in the condonation of delay application” (ii) “explanation falls woefully short of making out any sufficient cause” and (iii) “there was no sufficient cause whatsoever to condone such a long delay” in filing the appeal and in refiling the same;
20. For that the Hon’ble Division Bench in the Court below seriously erred in law in holding that limitation was to be counted in view of the provision as contained under the Commercial Courts Act, 2015 from the date of judgment and the appeal to be filed within the period of 60 days and in holding that the purport of the Order passed by the Coordinate Division Bench was only to file the appeal within the period of 30 days which did not mean that the statutory mandate to file appeal within the period of 60 days from the date of decree/judgment was to be waived out;
21. For that the Hon'ble Division Bench in the Court below failed to appreciate the ratio of the judicial precedents relied upon at the instance of the respective parties;
22. For that the findings of the Hon'ble Division Bench in the Court below are not based on materials on record but on utter surmises and conjectures, thereby patently erring in passing the impugned Order against the weight of documentary evidence;
23. For that the Hon'ble Division Bench in the Court below failed to exercise the jurisdiction and discretion vested in the said Bench by law and as such the impugned Order is vitiated by errors of jurisdiction as well as by improper exercise of jurisdiction;
24. For that the impugned Order has resulted in exposing the petitioner to sustain and suffer irreparable loss and injury, in flagrant miscarriage of justice and warrants interference by this Hon'ble Court;
25. For that the Hon'ble Division Bench in the Court below misconstrued the facts of the case, the law on the point and misdirected itself in passing the impugned Order and as such the same cannot be sustained.

**6. GROUNDS FOR INTERIM RELIEF :**

Interim Relief is sought for on the following Grounds :

(i) Because the balance of convenience lies in favour of the petitioner.

(iii) Because it would be in the interest of justice if this Hon’ble Court is pleased *to stay the impugned final judgment and order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023, during the pendency of this petition in this Hon’ble Court*.

7. **MAIN PRAYER:**

In view of the facts and circumstances of the case, it is therefore most respectfully prayed that this Hon’ble Court may be graciiously pleased to:

1. Grant special leave to appeal against the impugned Order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023; and
2. Pass such further and / or other Order and / or Orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

**8**. **PRAYER FOR INTERIM RELIEFS:**

It is therefore most respectfully prayed that this Hon’ble Court, during the pendency of the present petition, will be pleased to :-

(a). Grant ex parte order staying the operation of the impugned final judgment and order dated 19.07.2024 passed by the Hon’ble High Court of Jharkhand at Ranchi in Commercial Appeal No. 08 of 2023.

(b). Pass such order or orders and deemed fit and proper in the facts and circumstances of the case

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Drawn By Filed by :

Arijit Bardhan, Advocate

**(Rashmi Singh )**

Drawn On : .10.2024 Advocate for the Petitioner

Filed On : 16.10.2024

New Delhi

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**(Under Article 136 of the Constitution of India)**

**SPECIAL LEAVE PETITION (C) NO. OF 2024**

**IN THE MATTER OF:-**

MONGIA STEEL LIMITED ...PETITIONER

VERSUS

SALUJA STEEL & POWER PRIVATE LIMITED ...RESPONDENT

**CERTIFICATE**

Certified that the Special Leave Petition is confined only to the pleadings before the court / tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents / annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given on the basis of the instructions given by the petitioner/ person authorised by the petitioner whose affidavit is filed in support of the SLP.

Filed by :

(**RASHMI SINGH )**

Advocate for the Petitioner

New Delhi

Filed On : 16.10.2024