

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

**I.A.No.1 of 2025
IN/AND
COMMERCIAL COURT APPEAL No.27 of 2025**

DATE OF ORDER: 04.08.2026

Between:

M/s. Century 21, a registered Partnership Firm,
Rep. by its Partner and Two Others

.....Petitioners/Appellants

AND

Mohammed Khaleel and Three Others

... Respondents/Respondents

Mr. P.S. Rajashekar, learned counsel representing Mr. A.P. Reddy, learned counsel appearing for the appellants.

Mr. K. Arun Kumar, learned counsel representing Mr. R.A. Achuthanand, learned counsel appearing for the respondent Nos.1 and 2.

COMMON ORDER: *(per Hon'ble Justice Moushumi Bhattacharya)*

1. I.A.No.1 of 2025 is an application filed by the appellants for condonation of delay of 1373 days in filing of the Commercial Court Appeal.

2. The Appeal arises out of an order dated 05.12.2019 passed by the Commercial Court at Hyderabad dismissing COP No.38 of 2017 filed by the appellants for setting aside the Award

dated 14.03.2013 passed by the learned Arbitrator. The Commercial Court dismissed the COP, *inter alia*, on the ground that the appellants were unable to establish any patent illegality or perversity in the Award and there was no material on record to conclude that the Award was unfair, unreasonable or that the Award shocked the conscience of the Court.

3. The appellants have filed the present Appeal under section 13 of The Commercial Courts Act, 2015 ('CCA') read with section 37 of The Arbitration and Conciliation Act, 1996 ('A&C Act'). However, the issue before this Court is whether the delay of 1373 days in filing of the present Appeal should be condoned or not?

4. Learned counsel appearing for the appellants has placed the Affidavit in support of the petition filed for condonation of delay and the reasons stated therein explaining the delay of 1373 days in filing the present Appeal. Counsel submits that section 5 of The Limitation Act, 1963 ('Limitation Act') would apply to an Appeal filed under section 37 of the A&C Act and also that the appellants have shown sufficient cause for condoning the delay.

5. Learned counsel appearing for the respondents submits that the Appeal should be dismissed on the ground of inordinate delay. Counsel further submits that the appellants have failed to provide sufficient reasons for condoning the delay.

6. We have heard learned counsel for the parties. Counsel for the respondent takes strong objection to the delay being condoned. We propose to briefly outline the relevant reasons stated in the Affidavit for condoning the delay in the form of a sequence of events.

05.12.2019	Impugned order passed by the Commercial Court at Hyderabad dismissing the appellants' COP No.38 of 2017.
29.03.2020	Limitation under section 13(1A) of The Commercial Courts Act, 2015 expired.
15.03.2020 to 28.02.2022	Period excluded for computation of limitation by virtue of the Supreme Court judgment in <i>Cognizance for Extension, in Re</i> , (2022) 3 SCC 117 given in the wake of pandemic.
23.03.2022	The appellant No.3 was unable to travel to India and had to return to the USA and was admitted in a hospital.
24.04.2022	The appellant No.3 passed away in the USA.
30.05.2022	Look Out Notice was issued against the appellant No.2 on a complaint lodged by the respondents.
07.06.2022	The appellant No.2 was detained by the Immigration Authorities at RGIA, Hyderabad.

13.10.2022	The respondents filed Execution Petition for executing the Arbitral Award and for attachment of the appellants' properties.
02.11.2022	The appellants filed an application for Certified Copy of the impugned order dated 05.12.2019.
13.12.2022	The appellants received the Certified Copy of the impugned order.
February, 2023	The appellant No.2 met with an accident.
17.04.2023	The appellant No.2 filed W.P.No.10647 of 2023 before this Court for setting aside the Look Out Notice
June, 2023	The appellants consulted an Advocate for filing an Appeal against the impugned order.
July, 2023	The respondents have approached the appellants for compromise.
August, 2023	Disputes arose between the appellants and the respondents with regard to the properties at Chevella resulting in failure of the compromise talks.
October, 2023	The appellants consulted a new Advocate for filing the Appeal against the impugned order.
30.10.2023	The appellants submitted the required documents to their new Advocate.
14.11.2023	The appellants filed CMA No.614 of 2023 before this Court against the impugned order.
30.06.2025	The Court permitted the appellants to convert the CMA filed under section 37 of The Arbitration and Conciliation Act, 1996, to a COMCA under section 13(1A) of the CCA.

7. The reasons stated by the appellants in their Affidavit together with the relevant dates have been set out solely for the purpose of demonstrating the gaps between the relevant dates

and the corresponding reason provided for the delay. This Court is bound by the order passed by the Supreme Court excluding the period of limitation from 15.03.2020 to 28.02.2022. However, despite excluding the aforesaid period, the facts stated both before as well as post-COVID-19 would show that the appellants seek to foist the entire laches on the appellant No.3 (the deceased mother of the appellant No.2).

8. The inability of the appellant No.3 to travel to India in February and March, 2020 and in March, 2022 and her subsequent death in April, 2022 may be tragic, but does not absolve the appellant No.2 from taking steps to challenge the impugned order which was passed in December, 2019. The appellants themselves state that the limitation for challenging the impugned Order, i.e., sixty days, expired on 29.03.2020 under section 13(1A) of the CCA. Hence, the span of time from 29.03.2020 to 24.04.2022 (expiry of the limitation under the CCA till the death of the appellant No.3) would itself be two years 26 days.

9. The appellant No.2 failed to take any steps even after the death of the appellant No. 3. This would be evident from the

sequence of events between 30.05.2022 and 02.11.2022, during which the appellants should have explained the delay, particularly in light of the Look Out Notice issued against Appellant No. 2 and the Execution Petition filed by the respondents on 13.10.2022 for the enforcement of the Arbitral Award.

10. The first step taken by the appellants for challenging the impugned order was in November, 2022, i.e., three years after the impugned order. The appellants' laxity continued even after receiving the Certified Copy of the impugned order on 13.12.2022. The appellants state that the appellant No.2 met with an accident in February, 2023 and filed a Writ Petition on 17.04.2023 for challenging the Look Out Notice. The appellants consulted their Advocate in June, 2023 for challenging the impugned order. Hence, there is no explanation for the period between April – June, 2023 in terms of expediting the challenge to the impugned order.

11. The appellants take the ground of an attempted compromise between the Parties in July – August, 2023 as a reason to explain the delay. However, the fact of compromise,

per se, cannot by itself be a ground for delay in filing of the Appeal. The steps taken by the appellants continued to be in slow-motion even after failure of the compromise talks. The appellants consulted their new Advocate in October, 2023. The appellants filed the CMA only in November, 2023 which is four years after the impugned order of dated 05.12.2019. Later, the appellants sought leave of the Court to convert the Civil Miscellaneous Appeal to a Commercial Court Appeal in June, 2025 which is almost two years from the date of filing of the CMA.

12. The appellants' entire case is that the benefit of section 5 of the Limitation Act is available to them in an Appeal under section 37 of the A&C Act. This argument takes the appellants out of the stricter limitation of section 13(1A) of the CCA which provides, *inter alia*, that a person aggrieved by a judgment or order of a Commercial Court/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. The proviso to section 13(1A) clarifies that Appeals from section 37 of the A&C Act also fall within the Appeals as provided under section 13(1A) of the CCA.

13. The appellants' argument would also explain the appellants filing the CMA from the impugned order instead of a Commercial Court Appeal under section 13 of the CCA. The Appeal under the CCA would be regulated by the limitation under section 13(1A) which is more stringent than the discretionary relaxation available under section 5 of the Limitation Act.

14. Section 5 of the Limitation Act permits admitting Applications or Appeals being filed beyond the prescribed period of limitation subject to the appellant/applicant showing sufficient cause for not preferring the Appeal/making the Application within the prescribed period of limitation. Section 37 (1) and (2) of the A&C Act enumerate the categories of appealable orders to the Court authorised by law to hear Appeals from original decrees of the Courts. Unlike section 34(3), which prescribes a water-tight timeline of three months from the date on which the party making that application had received the Arbitral Award, and an additional thirty days under the proviso to section 34(3), no such limitation period is prescribed for an Appeal under section 37 of the A&C Act.

15. The absence of a timeline for preferring Appeals would consequently direct the Court to Article 116(a) of the Schedule to the Limitation Act which provides for a limitation period of ninety days from the date of the decree/order for an Appeal under The Code of Civil Procedure, 1908 to the High Court and Article 116(b) provides for a limitation period of thirty days from the date of the decree/order to any other Court from any decree or order.

16. In the present case, an Appeal under section 37 of the A&C Act would hence fall under Article 116(a) i.e., ninety days from the date of the decree/order. The absence of any period of limitation prescribed under the A&C Act in Appeals under section 37 was considered by the Supreme Court in *Government of Maharashtra Vs. Borse Brothers Engineers and Contractors Private Limited*¹ wherein it was held that section 37 of the A&C Act would have to be read with Article 116 or 117 of the Limitation Act or section 13(1A) of the CCA and that Appeals under section 37 of the A&C Act would be amenable to the discretionary powers of the Court under section 5 of the Limitation Act.

¹ (2021) 6 SCC 460

17. The Supreme Court further held that condonation of delay in Appeals under section 37 of the A&C Act would have to be considered within the parameters of section 5 of the Limitation Act, while at the same time preserving the object of speedy disposal of the arbitral disputes. The Supreme Court cautioned against treating ‘sufficient cause’ under section 5 of the Limitation Act as a panacea for negligent and stale claims and concluded that a delay beyond 90 days, 30 days or 60 days under the A&C Act and the CCA must be condoned by way of exception and not by way of Rule.

18. Thus, section 5 of the Limitation Act cannot be pressed into service as an automatic antidote to cure delays in filing of appeals under section 37 of the A&C Act.

19. The cases cited on behalf of the appellants are distinguishable on facts. *Sheo Raj Singh v. Union of India*² was concerned with a challenge to an order passed by the High Court by which the High Court allowed an application filed by the Union of India under section 5 of the Limitation Act condoning the delay of 479 days in presenting an Appeal from

² (2023) 10 SCC 531

the decision of the Reference Court under section of The Land Acquisition Act, 1894. The Supreme Court called for a liberal approach by the Courts and a certain leeway to be provided to the State/Union of India.

20. *Mool Chandra v. Union of India*³ reinforced the settled principle that the cause for delay should fall within the four corners of 'sufficient cause' regardless of the length of delay. The Supreme Court reiterated that the High Courts should not condone the delay where negligence can be attributable to the appellant.

21. In *Kandla Export Corporation v. OCI Corporation*⁴, the Supreme Court held that section 50 of the A&C Act enumerates the appellable orders under Part II of the A&C Act i.e., relating to enforcement of Foreign Awards. The Supreme Court further held that Appeals under section 13(1) of the CCA, being a general provision *vis-à-vis* arbitration relating to Appeals arising out of commercial disputes, would not apply to cases covered by section 50 of the A&C Act.

³ (2025) 1 SCC 625

⁴ (2018) 14 SCC 715

22. The sum and substance of the above cases, even if factually distinguishable, is that section 5 of the Limitation Act would apply to Appeals filed under section 37 of the A&C Act. Consequently, the Court would be authorised to invoke its discretionary powers to assess whether the appellant has shown sufficient cause for the delay in filing of the Appeal. However, despite such mitigation of timelines, condoning the delay beyond the limitation prescribed under Article 116 of the Limitation Act should be treated as more of an exception than the rule¹. In other words, even if the appellant claims immunity from the absence of rigorous timelines under section 37 of the A&C Act, the party would still have to cross the hurdle of establishing sufficient cause for being permitted to file an Appeal beyond the prescribed period of limitation under Article 116 of the Limitation Act.

23. Consequently, the decision as to whether the instant Appeal should be permitted to surmount the substantial delay would rest entirely on the causes stated in the Affidavit filed along with the petition for condonation of delay.

24. The counter filed by the respondents must also be looked at. The respondents have strongly opposed condonation of delay of 1373 days in filing of the COMCA. The respondents have raised several factual objections in their counter including that the appellants filed A.S.No.2 of 2023 in the Court of the learned X Additional Chief Judge, City Civil Court at Hyderabad, from a decree passed in O.S.No.1167 of 2017. A.S.No.2 of 2023 was filed on 28.04.2022 and was registered on 06.01.2023. The respondents question as to why the appellants chose to be diligent only in the Appeal Suit but failed to show equal diligence in challenging the impugned order dated 05.12.2019.

25. The respondents also deny the fact that the appellants approached them for a compromise and subsequent failure of the compromise. The respondents also say that the appellant No.2 is the Managing Director of the appellant No.1/Partnership Firm and has the necessary authorization to represent the Firm. Hence, the delay shown on the ground of the appellant No.3 (the mother of the respondent No.2) being unable to fly to India during the COVID period and her subsequent death cannot be sufficient causes to allow the application of condonation. The respondents also contend that the appellants have not filed any

document to corroborate the causes of illness and accident suffered by the appellant No.2 as contained in the Affidavit.

26. We find substance in the objection taken by the respondents. As stated above, the sufficiency of cause shown must reflect diligence and a genuine effort to explain the delay in filing of the Appeal or application beyond the prescribed period of limitation. The absence of particulars/corroborative evidence in support of the grounds becomes significant as the delay is substantial.

27. At the cost of repetition, even if the appellants seek refuge in section 37 of the A&C Act not being constricted with a timeframe, the appellants would still have to negotiate the ninety days limitation under Article 116(a) of the Schedule to the Limitation Act. The delay in the present case is of 1373 days which is nearly four years. The Affidavit fails to explain as to why the appellant No.2 chose to exclude himself from the process of challenging to the impugned order and depend on his mother/appellant No.3 to do the needful. The Affidavit also fails to explain as to why the appellant No.2 selectively pursued other proceedings, i.e., Appeal Suit and the Writ Petition against the

Look Out Notice, in the High Court, but completely ignored and overlooked the challenge to the dismissal of section 34 Petition. The grounds of accident and illness are not supported with any evidence.

28. We also deem it fit to reiterate that *Borse Brothers* (supra) may give the appellants an opportunity to invoke the discretionary powers of the Court under section 5 of the Limitation Act, but does not give the Court a free hand to condone the delay where there is an apparent lack of *bona fides*. *Borse Brothers* (supra) in fact cautioned that the Courts should be doubly-cautious in condoning delays where the avowed object of the A&C Act read with CCA is to expedite disposal of Arbitration and Commercial Disputes. We may also add that a lengthy statement containing numerous reasons for the delay will not save the appellants. Listing of twenty causes would not automatically translate to sufficiency. In contrast, even a few causes, explained with precision and with corroborating evidence, wherever required, would satisfy the test. Unfortunately, the present case falls under the former.

29. Thus, we are constrained to hold that the appellants have failed to show sufficient cause for condoning the delay of 1373 days in filing of the present Appeal.

30. I.A.No.1 of 2025 is accordingly dismissed. As a consequence thereto, COMCA No.27 of 2025 is also dismissed. Miscellaneous applications pending, if any, shall stand closed. No costs.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

Date: 04.08.2025.
TJMR