2026:AHC:207850

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 92 of 2026

Nitin Kumar And 9 Others

.....Appellant(s)

Versus

Project Director And 2 Others

.....Respondent(s)

Counsel for Appellant(s) : Devesh Kumar Verma, Sheetal Verma
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

In Re: Delay Condonation Application No. 2 of 2026

1. The present appeal purported to be under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act, 1996) has been preferred along with the delay condonation application supported by an affidavit for condoning the delay of 437 days in preferring the appeal questioning the judgment and order dated 04.12.2024 passed by the District Judge, Kanpur Nagar in Arbitration Case No. 20 of 2023, *National Highway Authority of India through its Project Director Vs. Nitin Kumar* under Section 34 of the Arbitration and Conciliation Act, whereby the objection under Section 34 of the Arbitration and Conciliation Act was allowed and the award dated 02.03.2022 was set aside and the award dated 04.09.2020 was affirmed, passed by the Competent Authority / Additional District Magistrate (Land Acquisition), Kanpur Nagar in Case No. 17 / 2018-19.

2. Sri Devesh Kumar Verma along with Sri Sheetal Verma, learned counsels for the appellants have submitted that though the judgment and order dated 04.12.2024 passed by the District Judge, Kanpur Nagar in Arbitration Case No. 20 of 2023, *National Highway Authority of India through its Project Director Vs. Nitin Kumar and others* under Section 34 of the Act, 1996 came to be passed, but the appellants could gather knowledge about the same only on 19.11.2025 and not prior to it.

3. Submission is that the deponent, who has sworn the affidavit in support

of the delay condonation application, was doing pairvi of the arbitration case pending in the Court of District Judge, Kanpur Nagar and when he met his counsel Sri Arvind Chauhan, Advocate and asked about the status of the case then he took out the file and it was found that the same stood decided on 04.12.2024, whereby the application filed by the N.H.A.I / opposite party came to be allowed under Section 34 of the Act. Thereafter, he complained the same to his counsel as to what was the reason in not apprising about the order dated 04.12.2024, then Sri Arvind Chauhan, Advocate asked from his clerk as to why he has not informed the deponent, who had filed the delay condonation application about the order dated 04.12.2024 passed by the District Judge, Kanpur Nagar, then the clerk of Sri Arvind Chauhan apprised that the computerized copy of the order was placed on record and thereafter, the file was tied up to the bundle of decided cases under the impression that the information had been given to the appellants. For such a conduct, Sri Arvind Chauhan felt sorry and thereafter, immediately instructed his clerk to obtain certified copy of the order dated 04.12.2024 and the deponent thereafter taking the computerized copy of the order dated 04.12.2024 came to Prayagraj and met his counsel, then his counsel asked him to bring the entire file from the lower court counsel including certified copy of the award of the Arbitrator and the Notifications under Section 3A and 3D of the National Highway Act, 1956 and thereafter, the certified copy of the order dated 04.12.2024 was issued on 08.01.2026 and thereafter with great difficulty, the documents were collected and the same were provided to the counsel in the month of May, 2026 and without any further delay, the appeal came to be preferred. The averments made in the affidavit in support of delay condonation application are quoted hereunder:-

"*1. That the deponent is the appellant no.1 in the present Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and doing pairavi on behalf of the remaining appellants and as such he is well conversant with the facts deposed herein after.*

2. That, on 19.11.2026 the deponent who was doing pairvi on the arbitration case pending in the court of District Judge Kanpur Nagar went to the court and met his counsel Sri Arvind Chauhan, advocate and asked about the status of the case thereupon Sri Arvind Chauhan. Advocate took out his office file and found that the same has already been decided by order dated 4.12.2024 and allowed the application

under section 34 of the Arbitration Act.

3. That, the deponent was shocked to know that the case has already been finalised last year i.e. on 4.12.2024 and since last one year no information was given by his advocate regarding the order dated 4.12.2024 passed by District Judge Kanour Nagar and asked the reason from his counsel for not giving information then the advocate asked his clerk as to why he has not informed the deponent about the order dated 4.12.2024 passed by District Judge Kanpur Nagar then his clerk after recollecting told the counsel Sri Arvind Chauhan that it appears that the computerised copy of the order was placed on recorded and thereafter the file was tied up the bundle of decided cases under presumption that information has been given to the party (deponent) and thereafter same slipped from their mind and therefore no information could be given to the deponent regarding the order dated 4.12.2024 passed by District Judge Kanpur Nagar. The counsel Sri Arvind Chauhan felt very sorry and thereafter immediately instructed his clerk to obtained certified copy of the order dated 4.12.2024 who on the same day applied for the certified copy of the order dated 4.12.2024.

4. That, the deponent thereafter taking the computerised copy of the order dated 4.12.2024 came to Prayagraj on 12.12.2025 and met the counsel, who after going through the order dated 4.12.2024 asked the deponent to bring entire file from his lower court counsel, certified copy of the order HA passed by the arbitrator, notification under section 3A and 3D of National Highway Act and copy of the award passed by competent authority, the clerk of the counsel on the same day got the photo id of the deponent prepared and thereafter he returned back to his home. The certified copy of the order dated 4.12.2024 was issued on 8.01.2026 and thereafter with great difficulty he could collect the copy of notifications and award declared by competent authority and order required documents, in the first week of May 2026 when the counsel was arranging his office files then he found the file of the present case and after going through the file and recollecting the case through mobile asked the deponent for not coming to Prayagraj alongwith the required papers for filing the arbitration appeal as much time has already been passed then the deponent told the counsel that the record arbitration case of Commissioner court is missing and is not traceable and therefore till date certified copy of the arbitration award has not been issued and therefore he did not come to Praygarj alonwgith other paper which he has collected then the counsel told the deponent to come to Prayagraj for filing the arbitration appeal as much time has already been passed and the arbitration appeal is already much beyond period of limitation and therefore in order to avoid further delay asked him to come alongwith the documents collected and photo copy of the arbitration award and get the arbitration appeal filed and for the certified copy of the

arbitration award he will file exemption application.

5. That, thereafter the deponent came to Prayagraj yesterday alonwgith the documents collected and vakalatnama signed by all the appellants and thereafter on his instructions the counsel prepared this arbitration appeal, delay condonation application and affidavits which are being filed without any further delay.

6. That, the neither the deponent nor the appellants have any notice, knowledge or information of the order dated 4.12.2024 passed by Learned District Judge Kanpur Nagar in arbitration case no:20 of 2023 prior to the date 19.11.2025 when for the first time their counsel Sri Arvind Chauhan, advocate told the deponent about the order dated 4.12.2024 passed by Learned District Judge Kanpur Nagar allowing the arbitration case no:20 of 2023 filed by National Highway.

7. That the appellants have a strong prima facie case on merits, and in case the delay is not condoned, they shall suffer irreparable loss and injury, whereas no prejudice would be caused to the respondents if the delay is condoned.

8. That the delay is neither intentional nor deliberate but is sufficiently explained, and therefore, the same may be condoned in the interest of justice by Hon'ble Court.

9.That, the delay in filing the arbitration appeal is bonafide, inadvertent and not deliberate and it is therefore expedient in the ends of justice that this Hon'ble Court may kindly be pleased to condone the delay in filing the arbitration appeal and the same may be treated within time and may be heard and decided on merits failing which the appellants shall suffer irreparable loss and injury."

4. I have heard the submissions of learned counsel for the appellants and perused the record carefully.

5. In order to address the issue whether the grounds taken in the delay application for condoning the delay of 437 days are tenable or not, what would be relevant would be the grounds taken in the affidavit in support of the appeal.

6. Interestingly, the stand taken by the appellant is that they could gain knowledge about passing of the order dated 04.12.2024 allowing the application under Section 34 of the Arbitration and Conciliation Act, 1996 of the opposite party only on 19.11.2025 as averred in para 6, though wrongly typed as 19.11.2026 in para 2 of the delay condonation application, as prior to it they had no knowledge about the same.

7. Apparently, the order is of the year 04.12.2024 and in para 3, no date

has been mentioned as to when the appellant contacted his lawyer in order to know about the whereabouts of the case.

8. Plainly and simply only this much has been asserted that for the first time on 19.11.2025, the appellant could gain knowledge of the order dated 04.12.2024. There is nothing on record to show that any communication was made by the appellants to their counsel seeking information about the stage and the status of the proceedings. What is more interesting is that the certified copy of the order 04.12.2024 came to be issued on 08.01.2026 and the said date is post 19.11.2025, the alleged date, on which the appellants could gain knowledge about the order of the Court below dated 04.12.2024, but more than four months passed and there is no explanation as to what transpired for four months when the documents were handed over to the counsel in the month of May, 2026. The reason set forth in the delay condonation application is as vague as possible as no documentary evidence has been annexed so as to support the averments and the allegations made therein. The delay cannot be condoned on mere asking, as there has to be a ground, which should depict that the delay in filing the appeal is unintentional and beyond control. The issue is no more *res integra* as the Hon'ble Apex Court in ***Government of Maharashtra (Water Resources Department) v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.***, **AIR Online 2021 SC 152** had observed as under:-

"*61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial 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.*"

9. Since, the grounds taken for condonation of delay are not tenable in the eyes of law coupled with the fact that this Court does not find the case to

be a fit case for according interference, thus, the delay condonation application for condoning the delay in filing the appeal is **rejected**.

Order on Appeal

Since by a separate order passed, delay condonation application has been rejected, consequently the appeal stands **dismissed**.

(Vikas Budhwar,J.)

October 5, 2026
N.S.Rathour