Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.24/2019
IN
STAMP NUMBER (MAIN) NO.2079/2018 (F)

1. MR UMAKANT SHANTA NAGWEKAR, S/o of Shanta Nagwekar, Age 70 years, Indian National, Senior Citizen.

2. SMT. APARNA UMAKANT, wife of Umakant Nagwekar, Aged 66, Indian National, Housewife.

3. MR. ROHIDAS DATTA POROB S/o Datta Porob, Age 68, Indian National, Senior Citizen

4. MRS KARUNA R. POROB W/o Rohidas Parab

All residents of HNo 421, Penha de Franca, Brittona, Bardez Goa. … APPLICANTS

Versus

1. THE MAPUSA URBAN CO-OP. BANK LTD. Mapusa Goa, a Co-operative Bank registered under Multistate Co-operative Act, having its Office at Nandeep Mapusa, Bardez Goa.

2. LATE SMT. KRISHNABAI DATTA POROB, Resident of H.no.421, Penha de Franca, Brittona Bardez Goa (Since deceased Through her legal heirs) Already on record 3,4 & 5

3. SMT. HIRABAI PAI ANGLE, Major in age, (since deceased) Negocianta de Chinchinim, Salcete Goa.

4. LATE SHRI PANDURANG PAI ANGLE, Since deceased Through his legal heirs

i) Mr. Kiran P. Pai Angle
(Since Deceased)

ii) Miss Hannsa P. Pai Angle,

iii) Mr. Somnath P. Pai Angle,

iv Mrs. Beena Somnath P. Angle,

v) Mr. Bharat P. Pai Angle

vi) Smt. Manik Gajanan Bharad,

vii) Mr. Gajanan I. Bharad,

viii) Mrs Bharati B. Pai Angle,

All residents of Chinchinim, Sakete Goa,
all major age

5. LATE SHRI MADHU ALIAS
MANGESH (Since deceased through his
legal heirs)

i.Mrs Shobhado Satish Palandekar

ii) Mr. Satish Palandekar,
Both residents of Near Green House Colva,
Salcete Goa.

iii) Mrs. Sheetal Anay Sambhari

iv) Mr. Anay Sambhari
Resident of Rajniketan Nr. Saraswati
Mandir, Bldg, Ponda Goa.

v) Mr. Mahesh M. Karande,

vi) Mrs. Vandana M. Karande,
both residents near Mangueshi Temple,
Mangueshi Goa.

6. MR. TULSHIDAS DATTA POROB,

7. SMT. PREMA TULSHIDAS POROB,
both major in age, both resident of
Surverdem, Navelim Salcete Goa

8. ANAND ALIAS QUESHEV DATTA
POROB, (Since Deceased)
r/o near Bataleshwar temple, Post Priol Goa.

9. MR ROHIDAS DATTA POROB
r/o near Mangeshi Temple, Post Print Goa. … RESPONDENTS

None for the Applicants.

Mr J. J. Mulgaonkar and Ms S. Parulekar, Advocates for the Respondents.

CORAM: VALMIKI MENEZES, J.

DATED: 08th OCTOBER 2026

ORDER :

1. This application has been listed since 30.01.2019 and has been pending before this Court on at least five occasions. After withdrawal of appearance by the original Advocate who had filed the application, and the subsequent counsel appointed under free legal aid, as none of the Applicants appeared before this Court until today, the application has been considered on its merits and disposed of.

2. This is an application for condonation of delay of 330 days in filing an appeal under Section 37(1)(c) of the Arbitration and Conciliation Act (the 'said Act'). The appeal which is filed with delay has challenged a judgment and order dated 25.07.2017 passed by the Principal District Judge, North Goa rejecting an application bearing No.26/2012 filed under Section 34 of the Act, upholding Award dated 27.03.2010 passed by an Arbitral Tribunal.

3. Section 37(1)(c) of the said Act provides for filing of an appeal to this Court against an order refusing to set aside an

arbitral award under Section 34; the provision of appeal however, does not prescribe the period of limitation within which such appeals can be filed to this Court. Section 43 of the said Act however applies to arbitrations as it applies to proceedings in Court as held in ***Government of Maharashtra represented by Executive Engineer v/s Borse Brothers Engineers and Contractors Private Limited***, reported in (***2021) 6 SCC 460,*** that Section 37 when read with Section 43 of the said Act, would apply to appeals filed under Section 37. The relevant paragraph of the judgment is quoted below:

> *"23. Section 37 of the Arbitration Act, when read with Section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under Section 37. This takes us to Articles 116 and 117 of the Limitation Act, which provide for a limitation period of 90 days and 30 days, depending upon whether the appeal is from any other court to a High Court or an intra-High Court appeal. There can be no doubt whatsoever that Section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of Section 43 of the Arbitration Act and by virtue of Section 29(2) of the Limitation Act."*

4. However, whilst applying the provisions of the Limitation Act to such appeals, the Supreme Court in ***Borse Brothers* (supra),** has considered the object of the Arbitration Act and the requirement for a speedy process of bringing disputes to an end at the earliest and after referring to several of its earlier judgments, has laid down the manner in which delays in filing appeals under

Section 37 are to be approached. The relevant findings are quoted below:

> *"43. The next important argument that needs to be addressed is as to whether the hard-and-fast rule applied by this Court in N.V. International is correct in law. Firstly, as has correctly been argued by Shri Shroti N.V. International does not notice the provisions of the Commercial Courts Act at all and can be said to be per incuriam on this count. Secondly, it is also correct to note that the period of 90 days plus 30 days and not thereafter mentioned in Section 34(3) of the Arbitration Act cannot now apply, the limitation period for filing of appeals under the Commercial Courts Act being 60 days and not 90 days. Thirdly, the argument that absent a provision curtailing the condonation of delay beyond the period provided in Section 13 of the Commercial Courts Act would also make it clear that any such bodily lifting of the last part of Section 34(3) into Section 37 of the Arbitration Act would also be unwarranted. We cannot accept Shri Navare's argument that this is a mere casus omissus which can be filled in by the Court.*
>
> ***52.** For all these reasons, given the illuminating arguments made in these appeals, we are of the view that N.V. International has been wrongly decided and is therefore overruled.*

53. *However, the matter does not end here. The question still arises as to the application of Section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in N.V. International which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.*

55. *Reading the Arbitration Act and the Commercial Courts Act as a whole, it is clear that when Section 37 of the Arbitration Act is read with either Article 116 or 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, the object and context provided by the aforesaid statutes, read as a whole, is the speedy disposal of appeals filed under Section 37 of the Arbitration Act. To read Section 5 of the Limitation Act consistently with the aforesaid object, it is necessary to discover as to what the expression "sufficient cause" means in the context of condoning delay in filing appeals under Section 37 of the Arbitration Act.*

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. LAO, has held: (SCC pp. 85-88, a paras 9-15)

> *"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 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 & Building Corpn. v. Bhutnath Banerjee, Mata Din v. A. Narayanan, Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai61)

10. In Arjun Singh v. Mohindra Kumar 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 Madantal v. Shyamlal and Ram Nath Sao v. Gobardhan Sao)

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 unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, Para 605 p. 266:

605. Policy of the Limitation Acts-The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice mi 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 & Kotecha Property v. SBI Staff Assn., Rajender Singh v. Santa Singh and Pundlik Jalam Patil v. Jalgaon Medium Project)

14. In P. Ramachandra Rao v. State of Karnataka 68 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. Nayuk.

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).

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. 77 as follows: (SCR p. 771: AIR p. 365, para 12)

"12. It is, however, necessary to emphasis 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 Section 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 Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14.

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. 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."

5. Considering the observations of the Supreme Court in paragraph 63 in ***Borse Brothers (Supra)***, in the present case the impugned Judgment of the District Court passed under Section 34 of the Arbitration Act is dated 25.07.2017. The limitation of 90 days under Article 116 of the Limitation Act would end on 23.10.2017. The certified copy was applied for on 03.10.2017 and was to be collected on 05.10.2017 though delivered on 06.10.2017. Since the Appellant would be entitled to deduction of three additional days taken for issuing the certified copy, their limitation would expire on 26.10.2017. The appeal under Section 37(1) before this Court came to be filed on 20.06.2019 which, if calculated correctly would be 237 days. The application would therefore have to contain facts pleaded therein, which can be considered sufficient cause to condone delay, not in the light generally seen in the light of applications general filed under Section 5 of the Limitation Act, but in the light of the

observations made in ***Borse Bros (supra)***, that is to say, in exceptional cases only.

6. For this purpose I would examine sequence of events pleaded in the application which according to the Appellants constitutes sufficient cause of exceptional nature, by which they seek to condone the delay.

The Respondent No.1 bank filed an application dated 15.10.1992, u/s 84 of the Multi-State Co-op. Societies Act, 2002 r/w Section 31 of the Arbitration & Conciliation Act,1996 before the Arbitral Tribunal. Subsequently upon reference being made and on completion of the proceedings the Arbitral Award was passed on 27.03.2010, following which the Applicants i.e. the legal representatives of the original Respondents, filed an application under Section 34 of the Act on 22.04.2010 before the Principal District Judge, North Goa at Panaji. By order dated 25.07.2017 the District Court rejected the Application.

7. The Applicant No.1 states that he was well-versed with the matter and though being a senior citizen, and being represented by an Advocate during the course of hearing of the application under Section 34, was not present on the date of passing of the Judgment. He states that he came to know of the Judgment only in October 2017. The certified copy was obtained on 06.10.2017.

8. In paragraph 5 of the application it is stated that the Appellant No.1 received the certified copy only in the last week of October 2017 after which he was able to seek advise from his

Advocate and receive the complete set of papers only in the second week of November, 2017. He then claims that he met the original Lawyer who was appearing before the Arbitrator in the last week of November, 2017 who opined that his was a good case for filing an appeal. He claims that the said Advocate volunteered to forward the Applicant's papers to an Advocate practising in the High Court. He claims that he could not contact the said Advocate and ultimately met Advocate M. D'Souza sometime in the third week of December 2017 who then advised him to apply for further documents. The Applicant also claims that this Advocate was not available until second week of January 2018 due to shifting of his office after which the file was misplaced in the Advocate's office and could not be traced till March 2018, after which the Applicant retrieved some of the papers from his earlier Advocate and some from the opponents herein and ultimately filed this appeal on 20.06.2018.

9. Going through the facts stated by the Applicants in their application, none of the explanations offered for the delay are convincing, and certainly not, in the background of the observations of the Supreme Court in ***Borse Brothers*** *(*supra), where an exceptional case is required to be made out for filing an appeal under the Arbitration Act beyond the period of 90 days. The facts stated in the application appear to be nothing but lame excuses and it is unbelievable that where a party was well-versed with his case, he would leave it to beyond three months from the date of obtaining the certified copy to even seek legal advise or commence drafting an appeal. The reasons cited in the application must therefore be rejected.

10. For the aforementioned reasons, no sufficient case has been made out to condone delay, much less, sufficient cause in the light of the observations made by the Supreme Court **in** ***Borse Brothers*** (supra). The application is therefore rejected/dismissed and consequently the Appeal and Miscellaneous Civil Application No.104 of 2020 also stand rejected.

VALMIKI MENEZES, J.