

2025:PHHC:104723-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CM-117-FCARB-2023 in/and
FAO-CARB-37-2023 (O&M)
Date of decision: 11.08.2025

Punjab Small Industries and Export Corporation Ltd.

...Appellant

Versus

M/s Bhullar Construction Company and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mrs. Kanwal S. Walia, Advocate for the appellant.

Ms. Deepali Puri, Advocate for the respondents.

VIKAS SURI, J.

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Prayer in this application under Section 5 of the Limitation Act, 1963, is for condoning the delay of 130 days in filing the accompanying First Appeal from Order (FAO).

Upon notice of the application, the respondents have put in appearance through counsel and opposed the same.

Learned counsel for the applicant-appellant submits that the applicant-appellant-corporation had preferred objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'Arbitration Act') against the award dated 02.04.2017 passed by the learned Arbitrator, whereby the appellant was ordered to pay a sum of Rs.60,74,075/- to the claimant-respondent within three months, failing which the awarded



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amount was to carry interest @ 10% per annum from the date of the award. The application/objections filed under Section 34 of the Arbitration Act, were dismissed by the learned Additional District Judge-cum-Presiding Officer, Commercial Court, Chandigarh, vide judgment dated 20.01.2023.

Aggrieved by the said judgment, the applicant-appellant-corporation has moved the present appeal along with the instant application seeking condonation of delay of 130 days in filing the appeal.

It is pleaded that upon receipt of intimation by the appellant-applicant from its counsel before the learned Commercial Court, about the passing of the impugned judgment dated 23.01.2023, request for applying for a certified copy thereof, was made. The application for obtaining the certified copy was moved on 08.02.2023, which was delivered on 15.04.2023. Thereafter, on retrieving the entire record from the counsel who had conducted the matter before the learned Commercial Court, Chandigarh, an opinion had to be sought from the concerned officials regarding suitability for preferring an appeal before the High Court. It is further pleaded that the applicant-corporation is a Government organization, with a pedantic system having many formalities that involve hierarchical structure, which resulted in taking some time for appointment of counsel to prefer the appeal. It is further pleaded that there is no intentional delay on the part of the applicant in filing the appeal, but for the circumstances beyond its control.

Learned counsel for the applicant has submitted that initially the appeal was filed under Section 37 of the Arbitration Act for which the



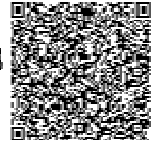
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period of limitation is 90 days, provided under Article 116 of the Limitation Act, 1973. Thus, the delay, in fact, is only of 100 days. It is further submitted that on certain objections having been raised by the Registry of this Court, whereafter, the matter was refiled after removing the said objections and upon refiling, the Registry has treated the present appeal as First Appeal from Order (Commercial Arbitration) under the provision of Section 13(1A) of the Commercial Courts Act, 2015. The period of limitation for preferring an appeal under the said provision has been reckoned to be 60 days and thus, delay of 130 days in filing the appeal has been calculated.

Per contra, learned counsel for the respondents has opposed the present application and defended the impugned order passed by the learned Commercial Court, Chandigarh. It is contended on behalf of the respondents that in view of the provision of Section 37 of the Arbitration Act, delay beyond a period of 120 days in filing the appeal cannot be condoned. It is further submitted that the provision of Section 5 of the Limitation Act would not apply to an appeal preferred under Section 13 of the Commercial Courts Act, 2015. Reliance has been placed on *N.V. International vs. State of Assam and others*, (2020) 2 SCC 109, which followed and applied the ratio in *Union of India vs. Varindera Constructions Ltd.*, (2020) 2 SCC 111.

Heard learned counsel for the parties and with their able assistance perused the record.

Learned counsel for the applicant-appellant refuting the contentions of learned counsel for the respondents has argued that the



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judgment rendered in *N.V. International's case* (supra) has since been overruled by a three-judge Bench decision in the matter of *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited*, (2021) 6 SCC 460. It is further submitted that the judgment in *Varindera Constructions* (supra) has also been impliedly overruled by *Borse Brothers* (supra). It is, thus, contended that the applicant-appellant being a Government corporation has painstaking lengthy procedures for taking the decision to prefer an appeal and the applicant was not at fault. Hence, the delay in filing the appeal be condoned.

The first issue arising for consideration is, what would be the period of limitation for preferring an appeal to this Court against an order passed by the Additional District Judge-cum-Presiding Officer, Commercial Court, Chandigarh.

The contention of learned counsel for the applicant-appellant that the appeal was filed under Section 37 of the Arbitration Act and as such, the period of limitation for preferring the same is 90 days from the date of the impugned order, in terms of Article 116 of the Limitation Act, cannot be accepted.

Admittedly, the impugned order dated 20.01.2023 has been passed by the learned Additional District Judge-cum-Presiding Officer, Commercial Court, Chandigarh. Under the Commercial Courts Act, appeals from decree of Commercial Courts and Commercial Division are provided under Chapter IV. Section 13(1A) provides that any person aggrieved by the judgment or order passed by a Commercial Court, at the



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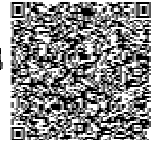
level of District Judge, may appeal to the Commercial Appellate Division of that High Court within a period of 60 days from the date of judgment or order. The proviso thereto, stipulates that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 (for short, 'CPC') as amended by the Commercial Courts Act and Section 37 of the Arbitration Act. Section 13(2) *ibid* begins with a non obstante clause that no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the Commercial Courts Act. Chapter IV of the Commercial Courts Act reads as thus:-

CHAPTER IV APPEALS

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, 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:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).



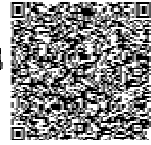
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(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals.—The Commercial Appellate Court and the Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

A bare reading of the aforesaid provisions would show that an order passed by a Commercial Court is only appealable under the provisions of Commercial Courts Act, which by the proviso to Section 13(1A) *ibid* provides for an appeal enumerated under Order 43 CPC as well as Section 37 of the Arbitration Act. The said provision also prescribes the period of limitation within which the appeal is to be preferred. Thus, an appeal against the impugned order dated 20.01.2023 could only be filed under the Commercial Courts Act and the period of limitation for preferring such an appeal is 60 days from the date of the impugned judgment or order. The aforesaid position stands affirmed by the Apex Court in ***Borse Brothers' case*** (supra), the relevant portion of the said decision, is as follows:

“32. Thus, from the scheme of the Arbitration Act as well as the aforesaid judgments, condonation of delay under Section 5 of the Limitation Act has to be seen in the context of the object of speedy resolution of disputes.

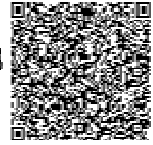


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33. The bulk of appeals, however, to the appellate court under Section 37 of the Arbitration Act, are governed by Section 13 of the Commercial Courts Act. Sub-section (1-A) of Section 13 of the Commercial Courts Act provides the forum for appeals as 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(1-A) 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.”

Perusal of the record would further show that upon institution of the present appeal before this Court on 21.08.2023, certain objections were raised by the Registry, which were accordingly complied with by learned counsel for the appellant and the matter was refiled on 23.08.2023 by appending a note ‘Refiled after compliance. Kindly put up as it is.’ The period of limitation calculated by the Registry, after deducting the requisite days consumed in the preparation of the certified copy, i.e. 23 days, has correctly concluded that as on 21.08.2023, the present appeal was barred by 130 days. A meticulous perusal of the instant application would also show that the same was apparently amended, wherein the prayer is for condonation of 130 days in filing the appeal, and not 100 days, as argued by learned counsel for the applicant-appellant.

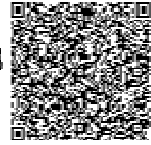
The next issue which arises for consideration is whether Section 5 of the Limitation Act would be applicable to an appeal preferred



under Section 37 of the Arbitration Act read with Section 13 of the Commercial Courts Act. The said question is no more *res integra*. A three-judge bench of the Hon'ble Supreme Court in ***Borse Brothers' case*** (supra) has settled the aforesaid issue and laid down that the application of Section 5 of the Limitation Act is not excluded. The relevant portion of the judgment, reads as thus:-

“34. The vexed question which faces us is whether, first and foremost, the application of Section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr George. The first important thing to note is that Section 13(1-A) of the Commercial Courts Act does not contain any provision akin to Section 34(3) of the Arbitration Act. Section 13(1-A) of the Commercial Courts Act only provides for a limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.

35. It may also be pointed out that though the object of expeditious disposal of appeals is laid down in Section 14 of the Commercial Courts Act, the language of Section 14 makes it clear that the period of six months spoken of is directory and not mandatory. By way of contrast, Section 16 of the Commercial Courts Act read with the Schedule thereof and the amendment made to Order 8 Rule 1 CPC, would make it clear that the defendant in a suit is given 30 days to file a written statement, which period cannot be extended beyond 120 days from the date of service of the summons; and on expiry of the said period, the defendant forfeits the right to file the written statement and the court cannot allow the written statement to be taken on record. This provision was enacted as a result of the judgment of this



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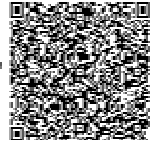
Court in *Salem Advocate Bar Assn. (2) Union of India*, (2005) 6 SCC 344.”

“39. Unlike the scheme of the Central Excise Act relied upon in *Hongo*, there are no other provisions in the Commercial Courts Act which provide for a period of limitation coupled with a condonation of delay provision which is either open-ended or capped. Also, the period of 180 days provided was one indicia which led the Court to exclude the application of Section 5 of the Limitation Act, as it was double and triple the period provided for appeals under the other provisions of the same Act. Section 13(1-A) of the Commercial Courts Act, by way of contrast, applies an intermediate period of 60 days for filing an appeal, that is, a period that is halfway between 30 days and 90 days provided by Articles 116 and 117 of the Limitation Act.

40. The other judgments relied upon by Dr George are all distinguishable in that they are judgments which deal with provisions that provide for a period of limitation and a period of condonation of delay beyond which delay cannot be condoned, such as Section 125 of the Electricity Act.

41. Section 21 of the Commercial Courts Act was also pressed into service stating that the non obstante clause contained in the Commercial Courts Act would override other Acts, including the Limitation Act, as a result of which, the applicability of Section 5 thereof would be excluded. This argument has been addressed in the context of the IBC in *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, (2019) 11 SCC 633, as follows : (SCC p. 664, para 41)

“41. Shri Dholakia argued that the Code being complete in itself, an intruder such as the



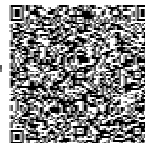
Limitation Act must be shut out also by application of Section 238 of the Code which provides that, ‘notwithstanding anything inconsistent therewith contained in any other law for the time being in force’, the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows:

‘60. Adjudicating authority for corporate persons.—(1)-(5)-

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.’

This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238-A of the Code, apply the provisions of the Limitation Act “as far as may be”. Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater. This argument, therefore, must also be rejected.”

42. For all these reasons we reject the argument made by Shri George that the application of Section 5 of the Limitation Act is excluded given the scheme of the Commercial Courts Act.”



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In view of the aforesaid, the instant application under Section 5 of the Limitation Act for condonation of 130 days in filing the appeal, is thus, to be considered on merits by this Court.

A careful perusal of the instant application seeking condonation of delay shows that the same is devoid of material particulars. The only ground raised therein is that the applicant-appellant-corporation, being an instrumentality of the State, has lengthy procedures and a hierarchical structure for taking a decision to prefer an appeal and for engaging a counsel.

It is well settled that no special treatment is to be given to a litigant if the said litigant happens to be the Government and the law has to be uniformly applied. In ***Post Master General vs. Living Media (India) Ltd., (2012) 3 SCC 563***, it was held that merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. The said decision has been followed in many subsequent judgments by the Apex Court. The relevant portion of the judgment is extracted hereunder:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the



Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

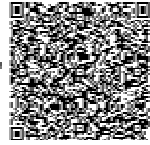
The applicant-appellant was not only required to plead but also demonstrate from the record that ‘sufficient cause’ was made out for not preferring the appeal within the prescribed period of limitation. It is also well settled that the expression ‘sufficient cause’ contained in Section



5 of the Limitation Act is elastic enough to yield different results depending upon the object and the context of a statute. However, having regard to the object sought to be achieved under both the Arbitration and the Commercial Courts Act, i.e. speedy resolution of disputes, the expression 'sufficient cause' cannot be stretched to cover long delays beyond the period prescribed for filing an appeal. The delay is to be condoned by way of exception and not by way of rule. The said aspect has been discussed in detail by the Apex Court in ***Borse Brothers' case*** (supra). The relevant findings in that regard read as under:-

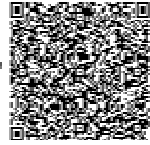
“62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 as follows (SCR p. 771 : AIR p. 365, para 12)

“12. 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 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.”



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It is notable that in the decision in *Borse Brothers' case* (supra), in one of the appeals, arising from SLP (C) No.665 of 2021, impugning the judgment of the Hon'ble High Court of Bombay, there was a delay of 131 days in filing the appeal. In the said case, like in the present case, there was no explanation worth the name contained in the condonation of delay application, beyond administrative exigency. The Hon'ble Apex Court considering the inordinate long delay of 131 days, dismissed the said appeal. In the present case, the situation is no different, there being a long delay of 130 days beyond the 60 days period provided for filing an appeal under Section 13(1A) of the Commercial Courts Act.

It is also notable that the office of the appellant-corporation is situated at Chandigarh and the matter has been decided by the Commercial Court, at the District Judge level, at Chandigarh and apparently, the counsel representing the corporation before the Commercial Court concerned was a local counsel. Thus, the applicant-appellant has been grossly negligent in pursuing the matter. It ought to have ensured timely filing of the appeal within the prescribed period of limitation. It is also well settled that the time consumed for preparation of a certified copy is only upto the date of preparation of the certified copy by the copying agency concerned and not upto the date of its delivery. In the present case, the certified copy of the impugned judgment dated 20.01.2023 was prepared on 02.03.2023 but the same was collected only on 15.04.2023. No explanation is forthcoming for the said inordinate delay of nearly 1½ months since preparation of the certified copy and it being collected from the copying agency concerned.



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On a conspectus of the aforesaid, the applicant-appellant has miserably failed to show sufficient cause, much less any cogent ground or material to establish the existence of any exceptional circumstance warranting condonation of delay of 130 days in filing the appeal beyond the period of limitation prescribed by law.

Accordingly, the present application is dismissed.

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The main appeal, being time barred, is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

11.08.2025
sumit.k

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No