

**M.C.D. Vs. G.D. Builders**

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**SooperKanoon Citation :** [sooperkanoon.com/690953](http://sooperkanoon.com/690953)

**Court :** Delhi

**Decided On :** Mar-11-2005

**Reported in :** 118(2005)DLT658; 2005(81)DRJ310

**Judge :** T.S. Thakur, J.

**Acts :** [Arbitration and Conciliation Act, 1996](#) - Sections 33, 34 and 34(3); [General Clauses Act, 1897](#) - Sections 3(35); Bihar Land Reforms Act, 1961; Limitation Act - Sections 5

**Appeal No. :** I.A. 6981/2004 in O.M.P. 360/2004

**Appellant :** M.C.D.

**Respondent :** G.D. Builders

**Advocate for Def. :** Tarun Sharma and ; Anjali Chauhan, Advs.

**Advocate for Pet/Ap. :** A.K. Trivedi, Adv

**Disposition :** Application allowed

**Judgement :**

**T.S. Thakur, J.**

1. A common question of law arises for consideration in all these applications seeking condensation of delay in the filing of the petitions under Section 34 of the

[Arbitration and Conciliation Act, 1996](#). The factual backdrop, which too is common to all the cases may be summarised thus :

2. The awards made by the arbitrators in all these cases were received on behalf of the petitioner Municipal Corporation of Delhi (hereafter referred to as 'the Corporation') on 15th July, 2003. An application under Section 34 of the Act aforementioned was filed by the Corporation in each one of the cases on 15th November, 2003. Since the petitions were admittedly beyond the period of three months reckoned from the 15th July, 2003, the petitioner filed applications seeking condensation of the delay in the filing of the petitions under sub-section 3 of Section 34 of the Act. The petitioner's case in these applications which are accompanied by affidavits of the Executive Engineer of the Corporation is that there has been a delay in the filing of the petitions under Section 34 on account of the time taken in processing the files and completing departmental formalities. Since this delay is, according to the petitioner Corporation, bonafide and unintentional, the same deserves to be condoned. The respondent has opposed the prayer for condensation primarily on the ground that the delay in the filing of the petitions is beyond the condonable limits prescribed under the proviso to Section 34(3) of the Act.

3. Appearing for the petitioner Mr. A.K. Trivedi, Advocate argued that the petitions filed on 15th November, 2003 were within the period of three months and 30 days prescribed under Section 34(3) of the Act. The delay in the filing of the petition was, therefore, condonable especially when the same had been occasioned because of the time taken in processing the file at various levels. On behalf of the respondent it was, on the other hand, argued that there was a delay of 31 days beyond the period of three months prescribed under Section 34(3) of the Act. The power of the court to condone the delay in the filing of the petitions being limited to only 30 days beyond the stipulated period of three months, the same could not be condoned.

4. Section 34 of the [Arbitration and Conciliation Act, 1996](#) provides for recourse to a court against an arbitral award and inter alia stipulates the period of limitation within which a party, dissatisfied with the award, may approach the court for

setting aside the same. Sub-section 3 of Section 34 is, in this regard, relevant and may, therefore, be gainfully extracted :

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

5. A plain reading of the above would show that an application for setting aside of the award can be made within three months from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal. Proviso to sub-section 3, however, empowers the court to entertain an application for setting aside the award within a further period of 30 days if the applicant satisfies the court that he was prevented by sufficient cause from making the application within the period of three months prescribed under sub-section 3. The expression 'entertain the application within a further period of thirty days, but not thereafter' is couched in the negative and clearly shows that the same is mandatory in character. It is evident from the language employed by the Parliament that the power to condone the delay in the filing of the petition has been limited to a period of 30 days beyond three months and no more. To that extent, there was no difficulty even before me. What was argued was that the delay in the instant cases was beyond the condonable limits of 30 days from the date the period of three months expired. The controversy, therefore, veered around the question as to when did the period of three months prescribed under Section 34(3) expire in the instant cases. An answer to that question would, in turn, depend upon the meaning to be attached to the term 'three months' or, to be more precise, to the expression 'month'. The term 'month' has not been defined under the [Arbitration and Conciliation Act, 1996](#). Section 3(35) of the [General Clauses Act, 1897](#), however, defines the word 'month' as under :

'month' shall mean a month reckoned according to the British calendar;

6. The above definition does not resolve the issue for what needs to be examined is as to when would a month be complete according to the British or Gregorian calendar if it were to be reckoned from an arbitrary date. Neither the [Arbitration and Conciliation Act, 1996](#) nor the [General Clauses Act, 1897](#) lends any assistance in this regard. Halsbury's Laws of England, 4th edition, however, describes a calendar month running from arbitrary date in the following words :

Calendar Month running from arbitrary date. When the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month<sup>1</sup>.

If a period of one calendar month includes the last day of February there must be twenty-nine or twenty-eight days, according as the year is or is not a leap year<sup>2</sup>.

7. Applying the above to the instant cases and excluding the date on which the award was received by the Corporation, the first month would expire on 16th August, 2003 and the succeeding two months on 16th September, 2003 and 16th October, 2003 respectively. Petitions under Section 34 of the Act, filed on 15th November, 2003, were, therefore, delayed by a period of 30 days only which period is within the condonable limits prescribed under the proviso to Section 34(3) of the Act. Considerable support for that view is available from the decision of the Supreme Court in *Bibi Salma Khatoon v. State of Bihar and Ors.* 2001 6 SLT 127. There too the question that fell for consideration was whether the application under the Bihar Land Reforms Act, 1961, was filed within a period of three months prescribed for the purpose. The court adopted the meaning attached to the term 'calendar month' given in Halsbury's Laws of England and came to the conclusion that the application had been made within the stipulated period of three months. What is significant is that the court excluded from reckoning the day on which the limitation period commenced running and the period of one month was taken to be expiring on the corresponding date of the following month regardless of the

number of days the intervening months had in them. The decision of the Himachal Pradesh High Court in *UOI v. Punjab Communications Ltd. and Ors.* 2003 (2) Arb. LR 604 and that of this court in *UOI v. Nav Bharat Nirman Company* 2003 (3) Arb. LR 309 relied upon by the respondent do not, in my opinion, take a contrary view in so far as the above aspect is concerned. In any event, the said decisions are of little avail to the respondent in the light of the decision of the Supreme Court in *Bibi Salma Khatoon's case* (supra).

8. The only other aspect that needs to be examined is whether the petitioner has made out a case for condensation of 30 days delay in the filing of these petitions. The power to condone available under the proviso to Section 34(3) of the Act is analogous to the power which the provisions of Section 5 of the Limitation Act generally confer upon the court. Both the provisions require proof of sufficient cause before an order of condensation may be made. The only difference being that while the power under Section 5 is not limited to any period that may be condoned, the proviso to Section 34(3) limits the exercise of the said power to an optimum of 30 days even on proof of sufficient cause. What would constitute 'sufficient cause' within the meaning of Section 5 of the Limitation Act has been the subject matter of numerous pronouncements of the Supreme Court and different High Courts in the country. It is unnecessary to refer to all such decisions, for a reference to some only of those rendered by the Supreme Court should suffice.

9. In *Shakuntala Devi Jain v. Kuntal Kumari and Ors.* : [1969]1SCR1006 , their Lordships held that unless an application was found to be bereft of bona fides or the delay was caused by inaction or negligence of the party, the prayer for condensation should not be declined. In *New India Insurance Co. Ltd. v. Smt. Shanti Misra* : [1976]2SCR266 , their Lordships held that the discretion vested in the court under Section 5 cannot be defined or crystallized so as to convert a discretionary power into a rigid rule of law and that the expression 'sufficient cause' should receive a liberal construction. Reference may also be made to *State of Kerala v. E.K. Kuriyipe and Ors.* where the court held that the existence or otherwise of a sufficient cause to justify condensation of delay was a question of fact to be decided in the facts and circumstances of each case. This was followed by the decision of the Supreme Court in *O.P. Kathpalia v. Lakhmir Singh and Ors.*

: AIR 1984 SC1744 where the court held that of refusal to condone the delay would cause grave miscarriage of justice, the same should be condoned.

10. The decision of the Supreme Court in Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. : (1987)ILLJ500SC dealt with an appeal filed by the State and held that Section 5 was meant to enable the court to do substantial justice by deciding the cases on their merits. The court further declared that the expression 'sufficient cause' was elastic enough to enable the courts to apply the law in a meaningful manner so that the same subserves the ends of justice which was in any case the life purpose for the existence of the institution of courts. The court also recalled its liberal approach in regard to condensation of delay but regretted that the message implicit in such orders of condensation had not percolated to the other courts in the hierarchy. It explained that the legal requirement that 'every day's delay must be explained' did not mean that a pedantic approach should be adopted. The doctrine must be applied in a rational common sense and pragmatic manner. It held that when substantial justice and technical considerations were pitted against each other, the cause of substantial justice deserved to be preferred as no party could claim to have a vested right in injustice being done because of a delay which was not deliberate. The following passage from the said decision of the Supreme Court is, in this regard, opposite :

'In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-gushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grate status. The courts thereforee have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.'

11. In *G. Ramegowda, Major and Ors. v. Special Land Acquisition Officer, Bangalore* : [1988]3SCR198 , the court was examining whether request for condensation of delay made on behalf of the government had to be examined adopting a different angle or standard. It observed that in litigations to which Government is a party, one aspect which stands out prominently is that if the action brought by the Government is lost by reason of any default in filing the appeal within time, no person is individually affected. It is the public interest which in the ultimate analysis suffers. The court held that while the law of limitation was the same for a private citizen as for governmental authorities, yet somewhat different considerations arise where a request for coronation is made by or on behalf of the Government. It would, therefore, be unrealistic to exclude such considerations from the judicial verdict. The factors which are peculiar to and characteristic of the functioning of the Government would, therefore, call for a certain amount of latitude if not a different approach altogether to be adopted in cases that arise on account of slow Governmental working or red-tapism that is implicit in the decision making process. The court observed :-

'Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic.'

12. The approach to be adopted in cases where the delay is occasioned because of slow moving governmental machinery was examined by a Division Bench of this court in *State v. Suresh Kumar Crl.M. Nos. 1624/02 and 57/04 in Crl.L.P. No. 52/2002*. Relying upon the decision referred to above, this court observed :

A conspectus of the pronouncements of the Supreme Court would thus show that while the basic requirement of establishing 'sufficient cause' for the delay as a condition precedent for an order condoning the same remains unaltered, the approach to be adopted while examining whether or not a sufficient cause has been made out has undergone a perceptible change over the years. This is so especially when it comes to appeals or applications filed on behalf of the State. While theoretically the law of limitation applies to both the citizen and the State equally, the decisions handed down by the Supreme Court, in an abundant measure, emphasise the need to keep the ground realities in view while dealing with a prayer for condensation made by the State and to adopt a justice-oriented and pragmatic approach leaning in favor of deciding cases on merits rather than dismissing them on the ground of limitation. The philosophy underlying this refreshing departure from the beaten track is a growing realisation that dismissal of cases on the ground that they are barred by limitation can, in State appeals, affect no one personally and yet cause grave prejudice to public interest. Public interest need not suffer because of indolence, inaction or negligence of any official in the government regardless whether the same arises out of a bona fide error of judgment, lethargy or corrupt motives. Dismissal of a cause otherwise than on merits may, in certain situations, amount to playing in the hands of such elements as are either disinterested in protecting public interest or deliberately work against the same by avoiding to take a decision where the same ought to be taken quickly. This is all the more so in criminal cases where the commission of the offence causes injury not only to the victim and his family but to the society at large. The task of balancing public interest with the individuals' right to speedy justice may, at times, prove difficult. But the court has to constantly remain conscious of the duties cast upon it and approach the issue from a pragmatic point of view rather than adopting a technical or hyper-sensitive approach.

13. In the present cases also, the delay in the filing of the application has been explained only on the ground that the official process culminating in a decision that the award should be challenged had resulted in the delay in the filing of the applications. The respondents have not alleged any corrupt motive behind the delay or the delayed filing of the application nor has the delay resulted in any unfair advantage to the applicants which is a local body whose functioning is akin

to the functioning of the governmental machinery at least in so far as the file pushing, slow-moving red rapist culture is concerned. In the circumstances, therefore, the prayer for condensation of delay cannot, in my opinion, be declined.

14. I accordingly allow these applications and condone the delay in the filing of the petitions under Section 34 of the Act. The respondents shall file their reply to the main petitions, if not already filed. The cases shall thereafter be set down for final hearing on 05.09.2005.

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