

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.09.2021

+ **O.M.P. (COMM) 255/2021 & IA Nos. 10941/2021 & 10942/2021**

UNION OF INDIA

..... Petitioner

Versus

M/S RAMA CONTRACTOR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr T.P. Singh, Senior Central Government Counsel.
For the Respondent : Mr Sandeep Sharma, Mr Aman Dhyani and Ms Kanchan Semwal, Advocates.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

IA Nos. 10943/2021 & 10944/2021

1. The petitioner has filed the above-captioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') impugning an arbitral award dated 25.06.2019 (hereafter the 'impugned award') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator.

2. The petitioner has filed the aforesaid application (IA No. 10943/2021) praying that the delay of 632 (six hundred and thirty-two) days in filing the above-captioned petition be condoned. The petitioner has also filed an application (IA No. 10944/2021) seeking condonation of delay of 10 (ten) days in re-filing the above-captioned petition. It is contended on behalf of the respondent that the petition has been filed beyond the period that can be condoned by this Court in terms of proviso to Section 34(3) of the A&C Act and therefore, the applications are liable to be rejected.

3. Thus, the principal controversy to be addressed is whether this Court can condone the delay in filing the above-captioned petition and if so, whether there are sufficient grounds to do so.

4. Certain dates and events are necessary to be noted in order to address the aforesaid controversy. Admittedly, the impugned award was received by the petitioner on 26.06.2019 (one day after the Arbitral Tribunal had delivered the same). The petitioner filed the petition under Section 34 of the A&C Act in the Court of District Judge, Commercial Court, Patiala House, New Delhi on 24.10.2019. The said court did not have any jurisdiction to entertain the present petition and, on 12.02.2021, the petitioner withdrew the petition. The order dated 12.02.2021 passed by the learned District Judge reads as under:

**“OMP(COMM.) No. 194/19
UNION OF INDIA Vs. M/S RAMA CONTRACTOR
& ANR.**

12.02.2021

Matter heard via video conferencing.

Present: Sh. Sanjay Yadav, Ld. Proxy Counsel for
Sh. Sanjeev Yadav.

Ld. Counsel for Petitioner (via video
conferencing).

Sh. Aman Dhyani, Ld. Counsel for
Respondent no.1 (via video conferencing).

Proxy Counsel for Petitioner seeks some time
to call Ld. Counsel for Petitioner who is busy else where
in other Court in video conferencing hearing

Be awaited.

Called again.

Present: Sh. Sanjay Yadav, Ld. Proxy Counsel for
Petitioner (via video conferencing).

Sh. Aman Dhyani, Ld. Counsel for
Respondent no.1 (via video conferencing).

Heard. Perused.

Ld. Counsel for Petitioner seeks to withdraw
present objections/petition with liberty to file it at proper
forum.

Ld. Counsel for Petitioner has sent an e-mail
to dedicated e-mail id of the Court with above said
prayer.

Accordingly, petition is dismissed as
withdrawn with liberty prayed for of course subject to
law of limitation

File be consigned to record room.”

5. The petitioner claims that he had filed the above-captioned petition in this Court on 17.06.2021. The same was returned under objections and it was re-filed on 07.08.2021. According to the petitioner, there is a delay of ten days in re-filing the petition and the petitioner has sought condonation of the same.

6. Mr Sharma, learned counsel appearing for the respondent, submits that the petition filed before the learned District Judge was beyond the period of three months and thirty days and therefore, even if the delay in filing is reckoned from the date on which the above-captioned petition was first filed before the learned District Judge, the same was beyond the period of thirty days that could be condoned by the Court.

7. He drew the attention of this Court to the following passages from the decision of the Coordinate Bench of this Court in *Union of India v. Wishwa Mittar Bajaj & Sons & Anr.: 141 (2007) DLT 179*, in support of his contention that the period of three months from the receipt of the impugned award, would expire on 23.09.2019:

“26. Such meaning of a ‘month’ was accepted by this court in the pronouncement of the Division Bench reported at *AIR 1973 Delhi 58 Daryodh Singh Vs. UOI & Ors*. In this behalf, the court held thus:-

“15. The deposit of the amount of Rs. 4500/- was actually made on May 16, 1960. It has, therefore, to be seen whether the deposit was made 'two months prior to 15-7-1960'. In its ordinary accepted sense the expression

'month' means a 'calendar month' and not a 'lunar month'.

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Thus one month counted from July 15, 1960 would be on June 16 and the second month counted from June 16 would be on May 17, 1960. Evidently, therefore, the deposit made on May 16, 1960 was two months prior to July 15, 1960.”

27. In *AIR 1970 AP 234 In re Vs. S. Metha & Ors.*, the court considered the expression 'three months of the date' in Section 106 of the Factories Act, 1948. It was held by the Court that month has to be construed as the calendar month as per the English Calendar.

28. Therefore, the expression 'three months' in Section 34(3) has to be construed as three calendar months from the date on which the signed award made by the arbitrator was delivered to the party.

29. Learned counsel for the petitioner has submitted that the award having been received on 28th July, 2005, this date has to be excluded for the purposes of computation of the period of three months and consequently, this period would end on 29th October, 2005.

30. If calculated on the basis of principles laid down by this court in *AIR 1973 Delhi 58 Daryodh Singh Vs. UOI & Ors.*, the first month counted from 28th July, 2005 would end on 27th of August, 2005, the second month would end on 26th of September, 2005 and the third month would end on 25th of October, 2005.

Even if the contention of learned counsel for the petitioner was to be accepted that the 28th of July, 2005 was required to be excluded, then if the period of 3 months is construed from 29th July, 2005, the first month

would end on 28th of August, 2005, the second month would end on 27th of September, 2005 and the third month would end on 26th of October, 2005.

31. On this basis, the period of 30 days which has to be construed in terms of provision of Section 34(3), such further period would expire on 24th of November, 2005. Such period, as per the date suggested by learned counsel for the petitioner, would expire on 25th November, 2005.

32. The objections having been filed on 28th November, 2005 were therefore clearly beyond the period of 30 days after the expiry of three months from the date on which the petitioner received the award.

33. Learned counsel for the petitioner has submitted that the period of three months has ended on 29th October, 2005. The period of 30 days thereafter expired on 28th November, 2005. It has been submitted that 27th of November, 2005 was a Sunday and therefore, having regard to the provision of Section 10 of the General Clauses Act, such date of limitation being a holiday and the objections having been filed on the next date are within limitation.

It has therefore been submitted that objections were filed on 28th November, 2005 are within the 30 days' period of permissible condonation.

34. In the light of the calculation effected hereinabove, I have found that looked at from whichever angle, the condonable period of thirty days has expired before the 27th November, 2005. Therefore nothing turns on the fact that 27th of November, 2005 was a Sunday. It is not the petitioner's contention that 24th to 26th of November, 2005 were non-working days for the courts.”

8. He submitted that the period of limitation of three months as mentioned in Section 34(3) of the A&C Act is required to be construed as three calendar months. And, the period of one calendar month would expire one day prior to the corresponding date in the month following the date from which the period is required to be reckoned. Thus, according to him, the first calendar month from 26.06.2019 (the date of receipt of the award) would expire on 25.07.2019; the second month would expire on 24.08.2019; and the third month would expire on 23.09.2019. He contended that the petition to assail the impugned award under section 34 of the A&C Act was filed before the District Judge on 24.10.2019. This was beyond the period of thirty days from 23.09.2019 and therefore, the delay in filing could not be condoned.

9. The contention that the period of three months from the receipt of the impugned award would expire on 23.09.2019 is, plainly, unmerited.

10. There is no dispute that the period of limitation in filing a petition under Section 34 of the A&C Act is three months. The expression ‘three months’ as used in Section 34(3) of the A&C Act does not refer to a period of ninety days but a period of three calendar months. The same was authoritatively held by the Supreme Court in the case of *State of Himachal Pradesh & Anr. v. M/s Himachal Techno Engineers & Anr.: (2010) 12 SCC 210*. The relevant extract from the said decision is set-out below:

“Re: Question (ii)

14. The High Court has held that “three months” mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A “month” does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.

15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words “three months” while prescribing the period of limitation and the proviso uses the words “thirty days” while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as “three months” and “one month” respectively or by describing the periods as “ninety days” and “thirty days” respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a “month” as meaning a month reckoned according to the British calendar.

17. In *Dodds v. Walker* [(1981) 1 WLR 1027 : (1981) 2 All ER 609 (HL)] the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is

the decision of this Court in *Bibi Salma Khatoon v. State of Bihar* [(2001) 7 SCC 197].

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.

Re: Question (iii)

19. As the award was received by the Executive Engineer on 12-11-2007, for the purpose of calculating the three months period, the said date shall have to be excluded having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897. Consequently, the three months should be calculated from 13-11-2007 and would expire on 12-2-2008. Thirty days from 12-2-2008 under the proviso should be calculated from 13-2-2008 and, having regard to the number of days in February, would expire on 13-3-2008. Therefore the petition filed on 11-3-2008 was well in time and was not barred by limitation.”

11. In the case of *Union of India v. Wishwa Mittar Bajaj & Sons & Anr.* (*supra*), this Court had held that the period of limitation under Section 34(3) of the A&C Act was three months and not ninety days but the calculation of the period of three months is, clearly, erroneous. The contention that the period of one month would be one day less than the corresponding date for every one month is obviously erroneous. If the said method of calculation is carried to a logical end, the period of twelve months from 1st January of any year would lapse on 18th December. There is no basis for computing a period described in calendar months in this manner. In any view, this issue is no longer *res*

integra in view of the authoritative decision of the Supreme Court in *M/s Himachal Techno Engineers. (supra)* as the court had held that the period of three months from 13.11.2007 would expire on 12.02.2008.

12. In view of the above, it is clear that the petitioner had filed the petition before the learned District Judge after a delay of twenty-eight days from the end of the limitation period of three months as stipulated under Section 34(3) of the A&C Act. Thus, the delay in filing the said petition could be condoned if the petitioner satisfied the court that it was prevented from filing a petition within the stipulated period of three months from the receipt of the impugned award. The question whether the petitioner is able to do so is a separate one.

13. The next question to be examined is whether the petition filed in this Court is within the period that can be condoned by this Court. Mr Singh, learned counsel for the petitioner contended that since the petitioner was pursuing the petition before the District Court till 12.02.2021, the said period is liable to be excluded by virtue of Section 14 of the Limitation Act, 1963. He further states that the delay of 12.02.2021 also stands condoned by virtue of the orders passed by the Supreme Court on 23.03.2020, 10.07.2020 and 27.04.2021 in ***Re: Cognizance for Extension of Limitation: Suo Motu Writ Petition (Civil) No.3/2021.***

14. Before proceeding further, it would be relevant to refer to Section 14 of the Limitation Act which reads as under:-

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

15. It is apparent that the benefit of Section 14 of the Limitation Act is available only in cases whether the party seeking such benefit had pursued the prior proceedings *bona fide* and with due diligence.

16. In *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Ors.: (2008) 7 SCC 169* the Supreme Court had held that the provisions of Section 14 of the Limitation Act were not excluded in respect of an application under Section 34 of the A&C Act. The relevant extract from the said decision is set out below:

“20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of

the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

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22. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the

court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (*sic* of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

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24. We may notice that in similar circumstances the Division Bench of this Court in *State of Goa v. Western Builders* [(2006) 6 SCC 239] has taken a similar view. As observed earlier the intention of the legislature in enacting Section 14 of the Act is to give relief to a litigant who had approached the wrong forum. No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute. The interpretation of Section 14 has to be liberal. The language of beneficial provision contained in Section 14 of the Limitation Act must be construed liberally so as to suppress the mischief and advance its object. Therefore, it is held that the provisions of Section 14 of the Limitation Act are applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.”

17. Although the benefit of Section 14 of the Limitation Act must be extended liberally. It is incumbent upon the party seeking such benefit to establish from the record that the necessary conditions as stipulated in Section 14 of the Limitation Act are met. The period in pursuing proceedings, which fail on account of defect in jurisdiction or such

reasons, is available only if it is established that the same were pursued diligently and in good faith. However, in the present case this is a contested issue as the learned counsel for the respondent submitted that the petitioner was not pursuing the proceedings before the learned District Judge diligently. He further contended that the petitioner had not taken steps despite being informed that the Court had no jurisdiction.

18. It is relevant to note that in the present case, the petitioner has not filed any application under Section 14 of the Limitation Act seeking condonation of delay. Mr Singh's contention that it is not necessary for the petitioner to file any such application is unmerited. In the event the petitioner desired to avail the benefit of Section 14 of the Limitation Act, it was necessary for the petitioner to establish the necessary conditions.

19. The above application filed by the petitioner under Section 5 of the Limitation Act is also of little assistance to the petitioner. This is because the said application does not satisfy the conditions as required to be met for availing the benefit of Section 14 of the Limitation Act. This is apparent from the contents of the said application, which are set out below:

“1. That the applicant / objector have submitted an objection application before the Hon'ble Court against the order dated 25/06/2019 passed by the Sole Arbitration Tribunal.

2. That the order has been passed on 25/06/2019 by the Sole Arbitration Tribunal in the above mentioned case. The copy of which was received on 26/06/2019 by the objector/applicant.

3. That after receiving the copy of the order, the award was thoroughly examined by then executive engineer and he was transferred and the present executive engineer joined the office on 04.07.201 as additional charge and he was informed about the award by the other officers and thereafter he went through the award and forwarded the same to S.E. and it was returned from S.E. office to E.E. office on 24.01.2019 with some objection and clarification and same was again put up with the S.E. office on 30.08.2019 and as copy of the award was also sent to the Senior Counsel/CPWD on 29.07.2019 after going through various channels a legal opinion was given by the Senior Counsel/CPWD for Union of India on dated 23.10.2019 to challenge the award.

4. That the objector /Applicant department requested the present Counsel for filling the Objection U/s 34 of Arbitration and Conciliation Act 1996 and same got drafted and filed the Petition.

5. That the applicant/objector/appellant submits that the present objection was filed in District Court /IN THE HON'BLE COURT OF DISTRICT JUDGE, PATIALA HOUSE COURTS, NEW DELHI, on 12.02.2021 which was dismissed as withdrawn with liberty to approach the appropriate forum wide order dated 25.06.2019, which further caused delay of 632 days

6. That the applicant/objector/appellant submits that if the Objection is not taken on record by condoning the delay due to the reasons above mentioned in submission of the objection U/s 34 of Arbitration and Conciliation Act 1996, this will cause injustice to the Objector.

7. That the total no. of 632 days delay in filing the present Objection U/s 34 of Arbitration and Conciliation Act 1996.”

20. It is seen from the above that there is no assertion that the petitioner had pursued the above petition diligently before the learned District Court. There is also no averment that the petitioner had filed a petition before the District Court on the *bona fide* belief that the said Court would have the jurisdiction to entertain the same. The petitioner has also not produced various orders passed by the learned District Judge to establish that the petition was being pursued diligently.

21. In view of the above, this Court is unable to accept that the period commencing from the date on which the petition was filed before the District Judge (24.10.2019) and the date on which it was withdrawn (12.02.2021) is liable to be excluded by virtue of Section 14 of the Limitation Act.

22. Having stated the above, this court has also examined the question whether the inordinate delay in filing can be condoned if the benefit of Section 14 of the Limitation Act is extended in this case. It is at once apparent that even if the benefit of Section 14 of the Limitation Act is extended to the petitioner and the period from 24.10.2019 to 12.02.2021 is excluded, the present petition cannot be construed having been filed within the period of thirty days of expiry of the stipulated period of limitation that can be condoned.

23. The petitioner had withdrawn the present petition from the learned District Court on 12.02.2021. However, it took no immediate

steps for filing the same in this Court. The filing log indicates that a petition comprising of 51 pages was filed on 17.06.2021. The said petition was neither accompanied by a statement of truth nor the impugned award. In fact, the petition was not accompanied by any documents at all. This Court is unable to accept that the petition filed on that date would be considered as a petition at all, and the said filing must be considered as *non-est*.

24. In addition to the above, there are also other defects as noted by the Registry in the filing log. The petition was marked for re-filing on 05.07.2021. It was, thereafter, filed on 07.08.2021 (thirty-three days thereafter). The petition and documents now comprised of 269 pages (as against 51 pages filed earlier). However, it was still defective. Consequently, it was returned by the Registry on 09.08.2021. It was re-filed on the very same day but the defects were not rectified. It was once again returned as defective on 10.08.2021 and re-filed on 12.08.2021. The petition and documents now comprised of 280 pages. The petition was still defective and therefore, was returned on 16.08.2021. It was again re-filed on 21.08.2021, however, it continued to be defective. It was finally re-filed on 24.08.2021 and at the request of the learned counsel for the petitioner, it was directed to be put up along with objections.

25. Even if it is accepted that the period between 24.10.2019 and 12.02.2021 is excluded, the petitioner had barely two days to file the above-captioned petition before this Court in order to assert that it was filed within the period of thirty days after the expiry of the period of

limitation of three months as stipulated in Section 34(3) of the A&C Act. As stated above, this is assuming that the benefit of Section 14 of the Limitation Act is extended to the petitioner.

26. However, the petitioner took more than four months to file the petition in this Court and as stated above, the petition as filed, was liable to be considered as *non-est*. In the circumstances, this Court is unable to accept that the petition can be construed as having been filed within a period of thirty days from the expiry of three months from the date of receipt of the impugned award.

27. The reliance placed by Mr Singh on the orders passed by the Supreme Court in *Re: Cognizance for Extension of Limitation: Sua Motu Writ Petition (Civil) No.3/2021*, is misplaced.

28. In *Sagufa Ahmed & Ors. v. Upper Assam Plywood Products Pvt. Ltd. & Ors.: (2021) 2 SCC 317*, the Supreme Court had clarified that the order dated 23.03.2020 passed by the Supreme Court in *Sua Motu Writ Petition (Civil) 3/2020* would apply to the period of limitation as stipulated and not to the period up to which the delay could be condoned in exercise of discretion conferred by the statute. Paragraphs 18 and 19 of the said decision is set out below:

“18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in *Sua Motu Writ Petition (Civil) No.3 of 2020*. It reads as follows:

“This Court has taken *Sua Motu* cognizance of the situation arising out of the

challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

19. But we do not think that the appellants can take refuge under the above order. **What was extended by the above order of this Court was only “the period of limitation” and not the period upto which delay can be condoned in exercise of discretion conferred by the**

statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

[highlighted in bold for emphasis]

29. In view of the above, this Court accepts the contention that the delay in the present case far exceeds thirty days beyond the period of limitation of three months and therefore, this Court cannot condone the same.

30. This Court also considers it apposite to note that the petitioner had not provided any reasonable explanation, which could persuade this Court to accept that the petitioner was prevented from filing the above-captioned petition within the period of three months as prescribed under Section 34(3) of the A&C Act. As noted above, the only explanation provided for the delay in filing the petition is that the Executive Engineer had joined the office on 04.07.2019 and after going through various channels, a legal opinion was given by the senior counsel, CPWD on 23.10.2019 to challenge the award. This explanation as set out in Paragraph 3 of the petitioner’s application (IA no. 10943/2021) is the only explanation of delay. There is not even an attempt to explain the delay in filing after 12.02.2021.

31. In view of the above, the benefit of proviso to Section 34(3) of the A&C Act would not be available to the petitioner.

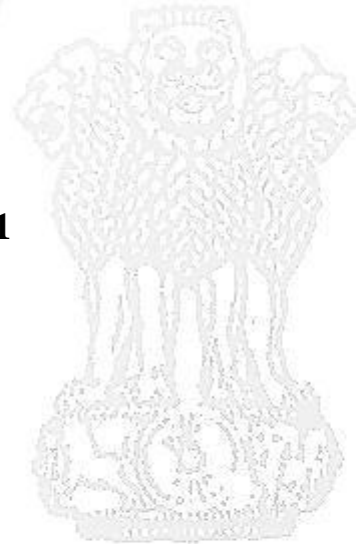
32. The applications are, accordingly, dismissed.

33. In view of the above, the above captioned petition is dismissed as filed beyond the period of limitation as prescribed.

34. All pending applications are also disposed of.

SEPTEMBER 13, 2021
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VIBHU BAKHRU, J



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