

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**OMP(M) No.107 of 2024 a/w
Arb. Appeal No.107 of 2024**

Decided on: 30th August , 2024

National Highway Authority of India

.....Petitioner

Versus

Surjeet Kumar

.....Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?

For the Applicant/: Ms. Shreya Chauhan and Ms. Sneh
Petitioner Bhimta, Advocates.

For the Respondent: Nemo.

Jyotsna Rewal Dua, Judge

In the facts and circumstances of the case, there is no necessity of issuing notice to the respondent on the delay application.

2. This application under Section 5 of the Limitation Act is for condoning the delay of 297 days in filing the arbitration appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') against the judgment dated 19.04.2023 passed by the learned District Judge in CMA No.29 of 2023 (National Highways Authority of India Versus Surjeet Kumar).

Whether reporters of print and electronic media may be allowed to see the order? Yes.

3. The reason for the delay assigned in the application is that the applicant became aware about the passing of the impugned judgment only on 21.03.2024. This cannot be considered cogent reason sufficient for condoning the delay as the applicant was duly represented by its counsel before the learned Court below.

4. A perusal of the impugned decision dated 19.04.2023 reveals that in terms of the said decision, the application moved by the present applicant under Section 5 of the Limitation Act for condoning the delay in filing the application under Section 34 of the Act, was dismissed on the ground that the delay beyond 120 days cannot be condoned.

It is well settled that Section 5 of the Limitation Act has no application to an application challenging an arbitral award under Section 34 of the Act. Under Section 34(3) of the Act, an application for setting aside the award on the grounds mentioned in Section 34(2) of the Act can be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso to Section 34 makes it

clear that extension cannot be beyond thirty days (Ref.: ***Simplex Infrastructure Limited Versus Union of India***¹).

In the instant case, there was a delay of 72 days in moving the application under Section 34 of the Act by the present applicant. Learned District Judge, therefore, did not err in holding that a delay beyond 120 days in moving the application under Section 34 of the Act could not be condoned.

5. In view of above, there is no merit in this application. The same is accordingly dismissed. Consequently, the main arbitration appeal is also dismissed alongwith pending miscellaneous application(s), if any.

August 30, 2024
R.Atal

Jyotsna Rewal Dua
Judge

¹ (2019) 2 SCC 455