

**HIGH COURT OF TRIPURA  
AGARTALA**

**IA No.01 of 2024 in/and Review Pet. No.18 of 2024**

Sri Ratan Datta, S/o Sri Maran Chandra Datta, resident of Road No.8,  
Ramnagar, P.O. Agartala, P.S. West Agartala, District – Tripura, Pin-799002.

..... Applicant/Petitioner (s);

Versus

1. State of Tripura, represented by the Secretary-cum-Commissioner,  
Public Works Department (Rig Division), PN Complex, Gurkhabasti,  
Agartala, West Tripura.
2. The Executive Engineer, PWD (Rig Division), PN Complex,  
Gurkhabasti, Agartala, West Tripura.

.....Respondent (s);

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For Applicant/Petitioner (s) : Mr. Somik Deb, Sr. Advocate,  
Ms. Simpee Saha, Advocate.

For Respondent(s) : Mr. Karnajeet De, Addl. G.A.

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**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO  
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

Date of hearing : **10.09.2025**

Date of Judgment & Order : **26.09.2025**

Whether Fit for Reporting : **YES**

**JUDGMENT & ORDER**

*(M.S. Ramachandra Rao, C.J.)*

1) Heard counsel for the applicant as well as counsel for the  
respondents.

2) The applicant is a contractor who had entered into an agreement  
on 30.07.2012 with the Executive Engineer, PWD (RIG Division), Agartala,  
for Drilling & Development of 25 nos. of Small Bore Deep Tube-Wells  
(SBDTW) with Departmental Direct Rotary (hydraulically operated) MINI  
Rig and other machineries & equipments in different locations of West

Tripura District during the year 2011-2012 under NRDWP Schemes in Tripura. The value of the work was Rs.80,82,294/-.

3) Disputes arose between the parties and ultimately the contract was rescinded. The respondents also imposed levy of compensation under Clause-2 of the agreement for an amount of Rs.3,74,180/- stating that extension of time for the completion of the work was granted by the Engineer-in-Charge up to 31.05.2014 without prejudice to the right of the Government to recover liquidated damages in accordance with the provision of Clause-2 of the agreement.

4) The matter was referred to arbitration and the Arbitral Tribunal rendered an award on 20.04.2018 as under:

*"In view of the findings and decisions arrived at Issue-wise in the preceding paragraphs of the Award it is hereby declare that the Petitioner is entitled to get in total Rs. 8,98,226/-(Rupees eight lakhs ninety eight thousand two hundred and twenty six) only from the Respondent. In addition to the aforesaid amount he is also entitled to get interest at the rate of 9% per annum over the awarded amount with effect from the date of Prayer before the Respondent for settling the dispute, i.e.10-09-2015 within three months from today failing which the Respondent shall have to pay at the rate of 12% per annum with effect from 10-09-2015 till the date of payment. Interest over the awarded amount under Issue No 'F' will not carry interest.*

*The Stamp duty is charged Rs.75/- only in respect of this award have been borne by the Petitioner. As the Stamp paper of Rs.75/- is not available the Petitioner filed Stamp Paper of Rs. 100/- only."*

5) Challenging the said award of the Arbitrator, the respondents filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Commercial Court, West Tripura, Agartala.

- 6) By order dt. 05.04.2022, in Civil Misc. (Arbitration) No.16 of 2018, the Commercial Court upheld the arbitral award passed by the Arbitrator and dismissed the application filed under Section 34 of the Arbitration and Conciliation Act, 1996.
- 7) Challenging the same, the respondents filed an appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 read with Section 13(1A) of the Commercial Courts Act, 2015.
- 8) When the respondents had filed said appeal, there was a delay of 134 days in filing the appeal, and the respondents had filed an I.A. No.01/2022 to condone the said period of delay in filing the appeal under Section 5 of the Limitation Act, 1963.
- 9) On 11.01.2023, the said delay has been condoned subject to payment of costs of Rs.1,000/- by the respondents to the High Court Employees' Association.
- 10) The said appeal was numbered as Arb. A. No.14 of 2022 by this Court.
- 11) After hearing both the parties, this Court opined that reasons had not been assigned by the Arbitrator before arriving at a finding that the Superintending Engineer had no power to interfere into the affairs of the performance of the contractor. It held that the finding of the Arbitrator that the notice issued by the Engineer-in-Charge was illegal and arbitrary because it was not issued for and on behalf of the Governor of Tripura, and his finding that while implementing any provision of the agreement the same must be for and on behalf of the Governor of Tripura, is perverse and patently illegal. It held that the view of the Arbitrator that the Engineer-in-Charge is not

empowered to rescind the contract is a patent error of law. Certain other findings are also recorded in the order, and it was concluded that the award of the Arbitrator was not sustainable in law as it was against the public policy doctrine and suffered from patent illegality.

12) This Court also held that the Commercial Court, in exercise of its power under Section 34 of the Arbitration and Conciliation Act, 1996, has not properly dealt with the finding and views expressed by the Arbitrator in his award.

13) It declared that the Arbitrator had decided the disputes/claims raised by the parties most mechanically without assigning any reasons; that non-assigning of reasons amounts to fundamental breach of natural justice under Section 34 of Arbitration and Conciliation Act, 1996, and is contrary to basic notion of morality and justice which renders the award perverse, and liable to be set aside on the ground of patent illegality.

14) The Division Bench of the High Court therefore allowed the appeal on 03.04.2024, and remitted the matter back to the Arbitrator for fresh decision by assigning reasons and fixed a time limit of six months.

15) On 29.07.2024, Review Pet. No.18 of 2024 has been filed by the applicant seeking review of not only judgment & order dt. 03.04.2024 in Arb. A. No.14 of 2022 but also the prior order dt. 11.01.2023 in I.A. No.01 of 2022 arising out of Arb. A. No.14 of 2022, condoning the delay of 134 days in filing the appeal.

16) Since the Review Petition was not filed within time, he filed IA No.01/2024, under Section 5 of the Limitation Act, 1963, to condone the delay of 87 days in presenting the Review Petition.

17) No explanation is offered as to why the applicant did not seek review of the order dt. 11.01.2023 in I.A. No.01 of 2022 arising out of Arb. A. No.14 of 2022 within 30 days from the said date.

18) There cannot be a single review petition to review (a) the order passed on 11.01.2023 in I.A. No.01 of 2022 *and* (b) the judgment & order dt. 03.04.2024 in Arb. A. No.14 of 2022. Both being distinct and separate orders, separate review petitions ought to have been filed by the applicant to review them.

19) Moreover, there is inordinate delay in filing the Review petition challenging the order dt. 11.01.2023 in I.A. No.01 of 2022 till 29.07.2024. Since the litigation is commercial litigation, the filing of the Review Petition for review of the said order with a long period of delay of almost 18 months, cannot be countenanced and the said period of delay is not liable to be condoned.

20) As regards the delay of 87 days in filing the Review Petition seeking review of the judgment & order dt. 03.04.2024 in Arb. A. No.14 of 2022 is concerned, it is stated by the applicant that on 04.05.2024 i.e., one month after the judgment was delivered in Arb.App.14 of 2022 on 03.04.2024, the applicant had consulted his lawyer for enquiring the steps to be taken and he was informed that he has to appear before the Arbitrator for fresh/further hearing; and the applicant decided to seek opinion from other counsel for the steps to be taken in furtherance of judgment & order dt.03.04.2024 in Arb. A. No.14 of 2022. He stated that the other counsel asked him to give the entire case record for determining the next course of action; thereafter, after securing

the file from the previous counsel on 19.05.2024, it was handed over to the other counsel being consulted by the applicant.

21) The applicant states that on 24.05.2024, he met the newly engaged counsel for exploring the next course of action, that they sought further ten days' time and the matter was again fixed on 04.06.2024 for a fresh discussion.

22) The applicant claims that on account of having a high fever, he did not meet the said advocates on 04.06.2024 and met them on 12.06.2024, and on that day it was suggested to him that he should take the opinion of another Senior advocate.

23) The applicant claims to have then met the Senior advocate on 19.06.2024, and it was initially decided to file a Special Leave Petition in the Supreme Court challenging the judgment dt. 03.04.2024; but the Senior advocate said it was only a tentative opinion and that final opinion would be given only after a meticulous study of the case records and fixed a conference on 30.06.2024.

24) It is stated that on that day the Senior Advocate was preoccupied with other cases and the conference was postponed to 09.06.2024, and it was decided to file a Review Petition and thereafter, the Review Petition was filed on 29.07.2024.

25) In *Government of Maharashtra (Water Resources Department) represented by Executive Engineer Versus Borse Brothers Engineers and Contractors Private Limited*<sup>1</sup> the Supreme Court emphasised that both under the Arbitration and Conciliation Act, 1996, and the Commercial Courts Act,

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<sup>1</sup> (2021) 6 SCC 460

2015, the object is speedy resolution of disputes. The Supreme Court considered the scope of the expression 'sufficient cause' in the context of condoning delay in filing appeals under Section 37 of the Arbitration and Conciliation Act, 1996. It held that the expression 'sufficient cause' was not itself a loose panacea for the ills of pressing negligent and stale claims. It reiterated that the statute no doubt grants the Courts with discretionary powers to condone the delay, but at the same time, it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of 'sufficient cause'. The Courts must not only take into consideration the entire facts and circumstances of the case but also the conduct of the parties and they must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, discretionary power to condone the delay ought not to be exercised as this would defeat the object of speedy resolution of disputes.

26) Applying this test to the instant I.A. No.01 of 2024, and the pleadings therein we may point out that, even application for issuance of certified copy of the judgment in Arb. A. No.14 of 2022, was made on 12.07.2024, three months after the judgment was pronounced in the Arbitration Appeal. Whether the applicant was intending to file an SLP or a Review Petition, the applicant has to obtain the certified copy of the judgment in Arb. A. No.14 of 2022. Therefore, the applicant ought to have immediately applied for the issuance of certified copy of the judgment of the Division Bench dt. 03.04.2024 in Arb. A. No.14 of 2022. No explanation is offered for

the delay in applying even for the certified copy of the judgment by the applicant in the application for condonation of delay.

27) Moreover, why the applicant kept quiet from 03.04.2024 to 03.05.2024 before consulting his counsel, is also not explained. While it was open to the applicant to consult lawyers for deciding on the future course of action, he ought not to have wasted almost four months' time and filed the application for review with a delay of 87 days.

28) It appears that though the applicant was fully aware that the matter has commercial implications, he adopted a casual and negligent attitude. Therefore, he is not entitled for condonation of delay in filing the Review Petition.

29) Also, no serious prejudice is caused to the applicant, since the matter is remitted back to the Arbitrator for fresh consideration to decide after giving reasons.

30) Therefore, I.A. 01/2024 in Review Pet. No.18 of 2024 is dismissed. Consequently, Review Pet. No.18 of 2024 is also dismissed. Pending application(s), if any, shall stand disposed of.

**(S. DATTA PURKAYASTHA, J)      (M.S. RAMACHANDRA RAO, CJ)**