



**Serial No.01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No.25/2024

Date of order: 27.03.2025

- 
1. Union of India represented by the Chief Engineer, Shillong Zone, Spread Eagles Falls Shillong-793011.
  2. Commander Works Engineer, Spread Eagles Falls Shillong-793011.
  3. The Garrison Engineer, Narangi, Guwahati. .... Petitioners

Vs.

1. M/s Bhaskar Construction Co. 5/2 N.C. Sen Avenue, Dum Dum, Kolkata-700080.
2. Brig S.S. Viridi (Retd), Ex. Chief Engineer J & K Zone, Director of Works Army and Director of Works, Navy H No.14 Sector 10, Chandigarh-160011. .... Respondents

**Coram:**

**Hon'ble Mr. I.P. Mukerji, Chief Justice**

---

**Appearance:**

For the Petitioners : Dr. N. Mozika, DSGI with  
Ms. K. Gurung, Adv

For the Respondents : Mr. B. Wanswett, Adv

- 
- |     |  |     |
|-----|--|-----|
| i)  | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press:           | No  |

**Note:** For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.

---



**JUDGMENT: (ORAL)**

This is an application made by the Union of India.

It is in the revisional jurisdiction of this Court, asking for revision of a judgment and order dated 4<sup>th</sup> October, 2024. By that order, the application of the petitioner-Union of India for condonation of delay in preferring an appeal under Section 39 of the Arbitration Act, 1940 from an order of the court below dismissing an application for setting aside an ex parte order in respect of the arbitral award was dismissed. There were two modes of calculation of delay in that application. By one mode, by 1821 days from the date of the order dismissing the setting aside application ex parte. By the other mode as argued by learned Deputy Solicitor General, 79 days from the date of knowledge.

In this case the method by which the delay is to be computed is not important. The delay has to be viewed from the circumstances.

On 5<sup>th</sup> September, 2003, a learned arbitrator passed an arbitral award in favour of the respondent No.1 (the respondent) for ₹19,75,406/- with simple interest at the rate of 12 per cent from the date of reference (5<sup>th</sup> October, 1994) to the date of the award (5<sup>th</sup> September,



2003). If the principal and the interest was not paid within three months, then further interest at the said rate till payment.

Within time the Union of India filed an application to set aside the award under Sections 30 and 33 of the Arbitration Act, 1940.

On 17<sup>th</sup> October, 2018, the application came up for consideration before the learned first court. For some reasons, learned counsel for the Union could not be present. Its version is that learned counsel who had been engaged had surrendered the brief on assuming a different official duty and the Union could not brief another counsel by 17<sup>th</sup> October, 2018. This factual assertion is very much disputed by learned counsel for the respondent. Whatever may have been the case, no official from the Union seems to have bothered about this matter.

Eventually on 9<sup>th</sup> September, 2022 judgment upon award was pronounced by the court below, at the instance of the respondent.

On 9<sup>th</sup> December, 2022 execution of the award was levied by the respondent.

It took the Union nearly a year from that date to file an appeal before the court of the Additional Deputy Commissioner (Judicial), Shillong together with a Section 5 application.



It was dismissed by the learned judge by the impugned judgment and order dated 4<sup>th</sup> October, 2024.

No doubt, nobody can say that the learned judge committed an error by dismissing the application for condonation of delay. But look at the consequences of such dismissal.

The award with accrued interest is now for ₹2.50 crores.

The award has become a Rule of court and payable without any contest on merits.

For wilful omission or negligence or inadvertence on the part of any officer or officers attached to the department concerned, the Central government would have to pay ₹2.50 crores without having an opportunity of contesting the award on merits.

From time to time, the Supreme Court has said that a matter is best adjudged on merits than on technical ground. Further, if the delay is not due to any culpable conduct, the court should actively consider condonation of delay. Of course, the condonation should not cause any prejudice to the other side.

I am of the view that the applications under Sections 30 and 33 should be decided on merits. No prejudice shall be caused to the



respondents as the awarded amount was deposited with the executing Court by the petitioners. Fifty per cent has been allowed by the executing Court to be withdrawn by the respondent. Fifty per cent lies deposited with the court. According to me, the respondent is more than adequately secured by the above order of the executing Court which was not even challenged by the Union.

I set aside the impugned judgment and order dated 4<sup>th</sup> October, 2024.

To avoid any further delay in adjudication of this matter, I am not minded to send back the application to set aside the award to the learned first court. The court of the Additional Deputy Commissioner (Judicial), Shillong shall hear the Sections 30 and 33 applications along with the application to set aside the ex parte order passed by the learned judge dismissing the Sections 30 and 33 applications. The ex parte order dated 17<sup>th</sup> October, 2018 shall be set aside first. The setting aside application shall be heard on merits. The court of the Additional Deputy



Commissioner (Judicial), Shillong is requested to dispose of the applications within two months of communication of this order.

**(I.P. Mukerji)**  
**Chief Justice**