

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9244 OF 2019
(Arising out of SLP (C) No. 23808/2019)

M/S N.V. INTERNATIONAL

Appellant(s)

VERSUS

THE STATE OF ASSAM & ORS.

Respondent(s)

J U D G M E N TR.F. Nariman, J.

- 1) Leave granted.
- 2) On the facts of the present case, an Arbitral Award dated 19.12.2006 was made by Justice K.N. Saikia, retired Judge of this Court. From this, a Section 34 petition was filed and rejected by the District Judge, Kamrup, Gauhati on 30.05.2016. An appeal under Section 37 of the Arbitration and Conciliation Act, 1996 was filed from this order in March, 2017, that is after a delay of 189 days from the 90 days that were given under Article 116 of the Limitation Act for filing such appeal. By the impugned judgment dated 24.06.2019, this delay was, on facts, not condoned as no sufficient cause was made out.
- 3) Mr. Parthiv K. Goswami, learned advocate on behalf of the appellant has argued before us that unlike Section 34, Section 37 does not exclude Section 5 of the Limitation Act, as a result of which even if the 90 day period is over, if a condonation application is made under Section 5 of the Limitation Act, it should be considered on its own merits notwithstanding the length of delay. Mr. Shuvodeep Roy,

learned counsel for the respondent supported the judgment under appeal, stating that 189 days cannot be condoned as the object of speedy resolution of disputes referred to arbitration would be subverted.

4) Having heard learned counsel for both sides, we may observe that the matter is no longer res integra. In SLP (C) No. 23155/2013 [Union of India vs. Varindera Const. Ltd.], this Court, by its judgment and order dated 17.09.2018 held thus:

“Heard the learned Counsel appearing for the parties.

By a judgment dated 19.04.2018 in Civil Appeal Nos. 3994-3995 of 2018 [Union of India vs. M/s Varindera Constructions Ltd. Etc.], this Court has in near identical facts and circumstances allowed the appeal of the Union of India in a proceeding arising from an Arbitral Award.

Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10.04.2013 has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the self-same proceeding under Section 37 should be covered by the same drill.

Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul and Others vs. Keshwar Lal Chaudhuri and Others, AIR 1941 Federal Court 5, and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost

despatch.

In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these Special Leave Petitions on the facts of this particular case.

The Special Leave Petitions stand disposed of accordingly.

Pending applications, if any, also stand disposed of."

5) We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following *Lachmeshwar Prasad Shukul and Others (supra)*, as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned.

6) Accordingly, the appeal is dismissed.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(S. RAVINDRA BHAT)

New Delhi;
December 06, 2019.