



Condonation of delay in arbitration appeals: A critical analysis of the Supreme Court's ruling in government of Maharashtra v. borse brothers engineers Contractors pvt. ltd. (2021) 6 SCC 460

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Abstract

This article critically examines the Supreme Court's judgment in Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd. (2021) 6 SCC 460, which provides significant clarification on the condonation of delay in filing appeals under Section 37 of the Arbitration and Conciliation Act, 1996. The ruling resolves conflicting interpretations among various High Courts regarding the applicability of the Limitation Act to such appeals and the discretion available to courts in condoning delays. This analysis explores the Court's reasoning, situates the decision within the broader statutory framework of arbitration and commercial dispute resolution, and discusses its practical implications for legal practitioners and arbitral jurisprudence. The judgment marks an important step toward harmonising procedural efficiency with the protection of substantive rights in arbitration appeals.

Keywords: Condonation of delay, arbitration appeals, Supreme Court judgment, limitation act, section 37 (arbitration and conciliation act)

Introduction

The Arbitration and Conciliation Act, 1996, was enacted to promote speedy and effective resolution of commercial disputes by limiting unnecessary judicial interference. Nonetheless, Section 37 of the Act, which permits appeals against arbitral awards on questions of law, has been a source of complexity, particularly concerning the time limit for filing such appeals and the conditions for condoning delays. Divergent rulings by various High Courts, including the Bombay, Delhi, and Madhya Pradesh High Courts, had created uncertainty on how the Arbitration Act, the Limitation Act, and the Commercial Courts Act operate in a motion.

Facts of the Case

In 2015, the Commercial Courts Act was implemented, which transferred all the pending arbitrations involving commercial disputes of a specified value to commercial courts (so designated in this regard). Section 13 of this Act provided a limitation period of 60 days (from the date of the judgment or order) for filing any appeal to the commercial appellate division. Section 13(1A) also provided that an appeal under Section 37 of the A&C Act would lie before a commercial court. But there were divergent views by different High Courts on this matter.

When an appeal was filed under Section 37 of the Arbitration and Conciliation Act, the Bombay High Court and the Delhi High Court dismissed the appeals filed by the Government of Maharashtra and by the Union of India, respectively, refusing to condone the delay in the filing of the appeal. The Madhya Pradesh High Court had, on the other hand, condoned a delay of 57 days, holding that it was open for the High Court to condone the delay in applying Section 5 of the Limitation Act. In this regard, the Madhya Pradesh High Court had refused to follow the judgment in *N.V. International* on the ground that there was a conflict between the said judgment and the judgment of a larger bench of the Supreme Court in *Consolidated Engg. Enterprises v. Irrigation Department*. Appeals were filed

against the decisions of three different High Courts. On March 19, 2020, the Supreme Court consolidated all three appeals and dismissed them in a single decision.

Issues Raised

- What are the key legal principles established by the Supreme Court in *Borse Brothers* regarding delay condonation under Section 37 of the Arbitration and Conciliation Act?
- How does this ruling interact with provisions of the Civil Procedure Code, particularly regarding limitation periods and condonation of delays?
- What implications does this decision have for future arbitration cases and the conduct of parties involved in disputes?

Law involved

Section 37 of the Arbitration and Conciliation Act, 1996, read with Section 43 of the Arbitration and Conciliation Act, 1996, made it apparent that the Limitation Act will apply to appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996. Articles 116 and 117 of the Limitation Act set a limitation term of 90 days or 30 days, depending on whether the appeal is from a lower court to the High Court or from a High Court to another High Court. As a result of Section 43 of the Arbitration and Conciliation Act and Section 29(2) of the Limitation Act, Section 5 of the Limitation Act will apply to the aforementioned appeals. Section 5 of the Limitation Act provides for the extension of the prescribed limitation period for appeals or applications if the appellant/applicant establishes sufficient cause for not preferring the appeal or making the application within such period. Section 13 of the Commercial Courts Act provides that a person aggrieved by the judgment or order in a commercial dispute may appeal to the commercial appellate court or the commercial appellate division of the High Court, as the case may be, within 60 days from the date of the judgment or order. The Arbitration Act does not prescribe a time limit within which an appeal can be filed under Section 37 of the Arbitration Act.

Contentions

Shri Sandeep Sudhakar Deshmukh presented the arguments for the Government of Maharashtra that the original Arbitration Act did not include the concept of expeditious resolution of disputes, which was later introduced by the Arbitration and Conciliation (Amendment) Act, 2015. Therefore, the foundation of the judgment in *N.V. International* is erroneous. Section 37 of the Arbitration Act allows appeals from various orders, including those under sections 8, 9, 16, and 17. The rationale for applying a strict 120-day limitation should primarily pertain to appeals from section 34 orders. Section 33 allows for the correction and interpretation of an award without a strict outer limit, suggesting that a uniform limitation period should apply across different sections. The limitation for filing applications under the Arbitration Act should be governed by Article 137 of the Limitation Act, which provides a longer period of three years, rather than the shorter periods prescribed for specific types of appeals.

Shri Vinay Navare appeared on behalf of the respondents and placed before the following arguments: The Government's appeal was delayed by a significant period (131 days) without adequate explanation, indicating a lack of clean hands in their approach. The rationale behind *N.V. International* should apply uniformly to all appeals under Section 37, as they are interconnected with original proceedings. The Arbitration Act explicitly includes timelines for various processes (e.g., sections 9(2), 11(4), and others), indicating that expeditious resolution is central to its purpose. Allowing long delays would undermine the objectives of both the Arbitration Act and the Commercial Courts Act, which aim for the speedy disposal of cases.

Analysis of Precedents

Kandla export corporation & anr. v. oci corporation & anr^[1] The Supreme Court affirmed the findings of the Commercial Appellate Court and ruled that Section 13(1) of the Commercial Courts Act is a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes. Accordingly, Section 13(1) would not apply to appeals arising out of foreign-seated arbitration unless they are expressly covered under Section 50 of the Arbitration Act. Therefore, a party can file an appeal against a court order in a foreign-seated arbitration only if the court refuses to refer the parties to arbitration (under Section 45) or refuses to enforce a foreign award (under Section 48).

Simplex infrastructure limited v. union of India^[2] it was held that Section 34 of the Arbitration Act excludes the application of Section 5 of the Limitation Act. No extension beyond the statutory three-month period and the extendable 30-day outer limit. However, Section 34 does not exclude the application of Section 14 of the Limitation Act (where time spent bona fide in courts without jurisdiction could be excluded while computing the statutory period for challenge). Consequently, the Commercial Courts Act, 2015, settled the limitation period for filing an appeal under Section 37 (against the order of commercial courts) at 60 days.

The SCI in *N.V. international v. State of assam*^[3] ("NV CASE"), In an appeal under Section 37 of the A&C Act, against the order of the Ld. District Judge Guwahati under Section 34 of the A&C Act, held that a grace period of 30 days (in line with Section 5 of the Limitation Act) be added to the 'statutory' period of 90 days for filing appeals under

Section 37 of the A&C Act. Resultantly, the prescribed limitation period for appeals under Section 37 of the A&C Act was held to be 120 days (i.e. 90 + 30 days). The SCI also opined that, in the last 120 days is prescribed for petitions under Section 34 of the A&C Act (i.e. first appeal), an appeal from the same proceedings under Section 37 of the A&C Act (i.e. second appeal) should therefore be covered by the same drill.

There was no uniformity in the limitation period even after the *N.V. International* case. The decision in the *N.V. International* case, which had some flaws, resulted in the High Courts taking opposing views.

- While the NV Case was concerned with an order under Section 34 of the A&C Act, whether its ruling will apply to appeals against orders of the arbitral tribunal under Section 8?
- Will NV Case apply to intra-court appeals? and
- Whether NV Case applies to appeals against the orders of commercial courts under Section 34 and Section 9 of the A&C Act?

Judgment/ Rationale

The three-judge bench of RF Nariman, BR Gavai and Hrishikesh Roy, JJ of the Supreme Court in the matter of *Government of Maharashtra v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.*, overruled one of its judicial precedents in the matter of *NV International v. State of Assam* (2020) 2 SCC 109.

Section 13(1A) of the Commercial Courts Act does not contain any provision which is related to section 34(3) of the Arbitration Act. Section 13(1A) of the Commercial Courts Act only lays out a limitation period of 60 days, which is from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be excused, the bench said^[4]. Also, the period of 180 days provided was one index which led the Court to exclude the application of section 5 of the Limitation Act, as it was double and triple the period which was provided for appeals under the other provisions of the same Act. Section 13(1A) of the Commercial Courts Act, by way of comparison, is applicable on an intermediate period of 60 days for appealing, that is, a period that is between 30 days and 90 days, which is provided by Articles 116 and 117 of the Limitation Act. Another argument was made by mentioning Section 21 of the Commercial Courts Act. It was advocated that the non-obstante clause contained in the Commercial Courts Act would supersede other Acts, including the Limitation Act, as a result of which, the applicability of section 5 would be excluded^[5]. The bench also made it clear that the expression "sufficient clause" is not flexible enough to wrap long delays beyond the period which is provided by the appeal provision itself. "Mentioned earlier and the target of brisk disposal which is desired to be achieved both under the Arbitration Act and the Commercial Courts Act, for which the appeals led under section 37 of the Arbitration Act that is being governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be excused by way of exception and not by way of rule.

Defects of Law

The Arbitration Act was designed to settle disputes out of court for quicker results. However, the provision in the

Arbitration Act for creating the right to appeals, namely, Section 37, does not speak about the most crucial aspect of fast-paced dispute resolution: limitation. The judiciary read this silence as importing both a limitation period and permission to condone delays against it from the prevailing general law. The Limitation Act is a general law, which applies its extension provisions only if speed is not the primary factor governing the special law. It is the general perception that the Arbitration Law is separate and complete in itself, but the Civil Procedure Code and Limitation Act are applicable in the Arbitration Matters referred before the Civil Courts under the Arbitration and Conciliation Act 1996.

Inference

The SCI in the Borse Brothers Case while dealing with one of the appeals against the order of the High Court of Madhya Pradesh held that MPHC was bound to follow the NV Case, as on the date of the judgment of the MPHC, the NV Case was a judgment of two learned judges of the SCI binding upon the MPHC by Article 141 of the Constitution of India. Concomitantly, the SCI clarified that its ruling in the Borse Brothers Case will be applicable prospectively and not to any of the pending Section 37 appeals, which were filed before the judgment in the Borse Brothers Case. Therefore, “Condonation of delay under Section 37 of the Arbitration and Conciliation Act must be interpreted such that it harmonises with the procedural mandates of the Civil Procedure Code.”

Reference

1. (2018) 14 SCC 715
2. (2021) SCC OnLine SC 233
3. (2020) 2 SCC 109
4. Appeal (Civil) No(s). 14467/2007
5. P. Radha Bai v. P. Ashok Kumar (2019) 13 SCC 445