

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12057 of 2025****With****R/SPECIAL CIVIL APPLICATION NO. 10602 of 2023**

=====

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Versus

M/S THE INDIAN HUME PIPE COMPANY LTD & ANR.

=====

Appearance:

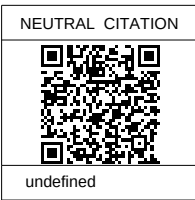
VIKAS V NAIR(7444) for the Petitioner(s) No. 1

MR BHARAT T RAO(697) for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 03/10/2025****ORAL ORDER**

1. **Rule** returnable forthwith. Learned advocate Mr. B.T. Rao waives service of notice of rule on behalf of respondent No.1.
2. The presence of respondent No.2 being Arbitrator is not required for adjudicating these matters.
3. With the consent of the parties, the matter is taken up for final hearing.
4. Heard learned advocate Mr. Vikas V. Nair for the petitioner and learned advocate Mr. B.T. Rao for respondent No.1.
5. Both these writ applications filed under Article 227 of



the Constitution of India arising out of common judgment and order dated 07/01/2023 passed by the City Civil Court, Ahmedabad City in Civil Misc Applications No. 172 & 178 of 2016 respectively.

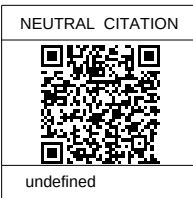
6. The facts are common of both these writ applications and the issue germane is also common. So, to resolve the controversy involved in the present matters, the facts of Special Application No. 12057 of 2025 is considered.

Facts of the case

7. The petitioner herein is a statutory body incorporated under the Gujarat Industrial Development Act, 1962, whereas respondent No.1 is a Company registered under the Companies Act, who appears to have invoked arbitration against the petitioner whereby, respondent No.2 being Arbitrator passed an award in its favour.

7.1 The petitioner appears to have questioned such arbitral award by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act, 1996') being Civil Misc. Application Nos. 78 and 79 of 2004 respectively.

7.2 Both these applications came to be dismissed for

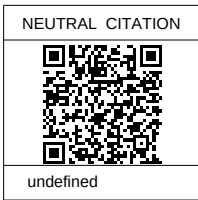


default by the Court below vide its order dated 12/02/2013. The petitioner appears to have filed impugned applications being CMA Nos. 172 & 178 of 2016, by which sought for restoration of the aforesaid applications filed under Section 34 of the Act, 1996.

7.3 It further appears from the record that both these impugned applications came to be initially allowed by the Court vide its common order dated 18.04.2018 thereby, the applications being CMA Nos. 78 and 79 of 2004 came to be restored back on its original file.

7.4 Respondent No.1 herein appears to have questioned the aforesaid common order passed by the Court below by filing writ application being Special Civil Application Nos. 10175 of 2018 and 10173 of 2018 before this Court. After hearing the parties, this Court vide its judgment and order dated 06/04/2022 quashed and set aside the aforesaid order passed by the Court in CMA Nos. 172 & 178 of 2016. Accordingly, both these impugned applications i.e. CMA Nos. 172 & 178 of 2016 restored back on its original file and matters were remanded back to the trial Court to decide afresh both these impugned applications.

7.5 On remand of the impugned applications, the trial

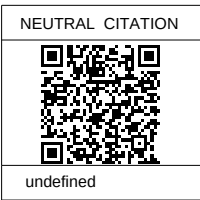


Court having heard learned advocates for the respective parties found that there is inordinate, unexplained and long delay of 1074 days on part of the petitioner in filing restoration application. Having not found any sufficient cause in both these application, accordingly, the impugned applications came to be rejected by the Court vide its order dated 07/01/2023. Hence, the present writ applications.

Submission of the petitioner

8. Learned advocate Mr. Vikas Nair would submit that petitioner being statutory body fully depended upon its Lawyer, who never informed about dismissal of the applications on 12/02/2013 filed under Section 34 of the Act, 1996 being CMA Nos. 78 & 79 of 2004. It is submitted that when Jangam warrant came to be served upon the petitioner on 08/02/2016, it came to its notice about dismissal of its applications. It is further submitted that there is no deliberate delay on the part of the petitioner in not filing restoration application within stipulated time.

8.1 Learned advocate Mr. Nair would further submit that when the petitioner having gathered knowledge about dismissal of their applications filed under section 34 of the Act, 1996, immediately, filed impugned applications on

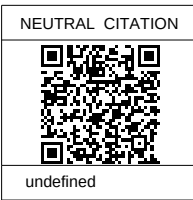


13/04/2016 whereby, there is no inordinate delay. It is submitted that petitioner being Government Instrumentality requires to get appropriate permission before filing application in Court of law which consume some time to file impugned applications. It is respectfully submitted that there is no mala-fide intention on the part of the petitioner not to file restoration application within stipulated time.

8.2 Learned advocate Mr. Nair would further submit that in earlier round, when at relevant point of time, the Court accepted the explanation of the petitioner, as sufficient cause made out by the petitioner in its delay application, later on, the Court concerned could not have taken different view in the matter.

8.3 Learned advocate Mr. Nair would further submit that the applications which dismissed for default filed under Section 34 of the Act, 1996 i.e. CMA Nos. 78 & 79 of 2004 thereby, challenged the arbitral award passed by the Respondent No.2 - Arbitrator, such applications could not have been dismissed for default, inasmuch as there is no such provision under the Act, 1996, which empowered the Court to dismiss such applications for default.

8.4 Learned advocate Mr. Nair would further submit that



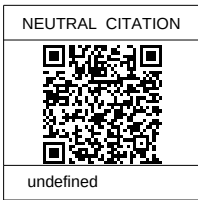
mere long delay in filing restoration application would not be a ground to reject delay application. It is submitted that as per settled legal position of law, length of delay is not material but explanation set out by the applicant in its delay application would be significant, requires to be considered by the trial Court in pragmatic manner. It is respectfully submitted that when neither any inordinate delay, dilatory tactics nor any mala-fide intention on the part of the petitioner in filing restoration application, delay requires to be condoned in the interest of justice, even by imposing any cost.

8.5 To buttress his argument, learned advocate Mr. Nair would refer and rely upon the following decisions.

(i) Collector, Land Acquisition, Anantnag and Anr. Vs. Msr. Katji and Ors. reported in AIR 1987 SC 1353.

(ii) Mool Chandra Vs. Union of India and another reported in 2025 (1) SCC 625.

8.6 Making the above submissions, learned advocate Mr. Nair would request this Court to allow the present writ applications.

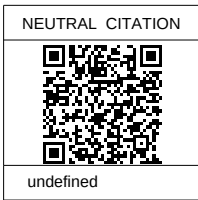


Submission of the respondent

9. Per contra, learned advocate Mr. B.T. Rao would vehemently object the present writ applications on all counts. It is submitted that there is no error much less any gross error of law committed by the trial Court while rejecting the impugned delay applications, then this Court should not interfere with the well-reasoned order.

9.1 Learned advocate Mr. Rao would respectfully submitted that in earlier round of litigation, this Court having found that the trial Court has not considered vital facts of the case, inasmuch as execution notice came to be served upon the petitioner on 20/08/2015 and Jangam Warrant came to be served on 08/02/2016 and restoration application came to be filed on 13/04/2016, this itself shows that there is complete non-action on the part of the petitioner in filing restoration application. It is respectfully submitted that such negligent approach on the part of the petitioner should not allowed to be encouraged by this Court, by condoning delay on any condition.

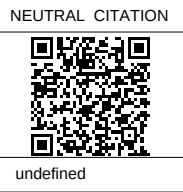
9.2 Learned advocate Mr. Rao would further submit that the trial Court has categorically found that there was negligent approach on the part of the petitioner in filing



restoration application and having found that the delay is so inordinate on the part of the petitioner, even after getting aware about dismissal of restoration application, no effective steps were taken for its restoration. It is submitted that no discretionary relief requires to be granted in favour of the petitioner, who remained indolent for quite long time.

9.3 Learned advocate Mr. Rao would further submit that it is settled legal position of law that when there is gross negligence, inordinate delay and indifferent approach on the part of the applicant, seeking condonation of delay, this Court should not condoned the delay on any condition. It is submitted that the judgments so cited by the learned advocate Mr. Nair for the petitioner would not be applicable to the present case, inasmuch as there is no sufficient cause made out while filing delay application. It is submitted that if petitioner did not remain present in the application so filed under Section 34 of the Act, 1996, then after, the Court has inherent power to dismiss the applications for default. It is further submitted that as such there is no bar under the Act, 1996, whereby no Court can dismissed such application for default.

9.4 Making the above submission, learned advocate Mr. Rao would request this Court to reject the present writ



applications.

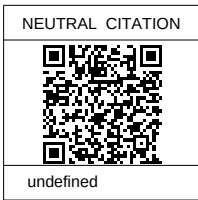
10. No other and further submissions have been made by the learned advocates for the respective parties.

11. *The short question falls for my consideration as to;*
(i) whether in the facts and circumstances of the case, any gross error of law or any jurisdictional error committed by the trial Court while rejecting the impugned delay application having not condoned the delay of 1074 days in filing restoration applications ?

Analysis

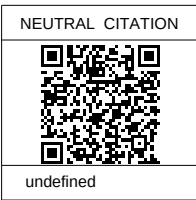
12. The facts which are narrated hereinabove are not in dispute. The petitioner having aggrieved by an arbitral award passed by respondent No.2, filed two independent applications under Section 34 of the Act, 1996 being CMA Nos. 78 & 79 of 2004. It further appears that both these applications came to be dismissed for non-prosecution on 12/02/2013, this fact also remain undisputed on record.

13. Further, on getting such applications dismissed for non-prosecution, respondent No.1 filed execution application, wherein Jangam warrant came to be served upon the petitioner on 30/08/2015. For any reason, it has been so



pointed out by the petitioner in its impugned applications so also in the present writ applications that petitioner only came to know about dismissal of such applications being CMA No. 78 & 79 of 2004 on 08/02/2016. These appears to be not correct date of knowledge on the part of the petitioner, inasmuch as when the execution notice came to be served upon the petitioner on 30/08/2015, it was wake up call for the petitioner to get it check status of its applications filed under Section 34 of the Act, 1996.

14. Furthermore, it would not transpires from the record that petitioner at relevant point of time, made any endeavour to know and check the status of its applications wherein its questioned the arbitral award. Even, petitioner through its penal Advocate, could have easily checked the status and prompt action could have been taken in the matter. For variety of reasons, neither any prompt action taken to file restoration application nor any steps taken against its penal advocate for whose default the aforesaid applications being CMA No. 78 & 79 of 2004 came to be dismissed for non-prosecution on 12/02/2013. The aforesaid act would only suggest *lackadaisical* approach on the part of the petitioner in pursuing its legal remedy which ultimately resulted into delay of around 1074 days in filing restoration applications. The delay in filing restoration application is not

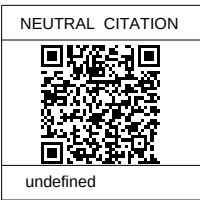


only inordinate but huge i.e. Three years.

15. The Court has thread-bare considered the facts and circumstances of the case when remanded the matter back by this Court, having come to the conclusion that there is negligence on the part of the petitioner in filing restoration application.

16. So far as the decisions so relied and cited by the learned advocate Mr. Nair for the petitioner in support of his submission, none of it would applicable to the facts of the present case, inasmuch as, it has come on record by the aforesaid facts that despite notice of dismissal of applications filed under Section 34 of the Act, 1996, the petitioner had not taken any effective steps within stipulated time and so also never tried to get it check the status of such applications having so filed in the year 2004, which got dismissed for non-prosecution in the year 2013.

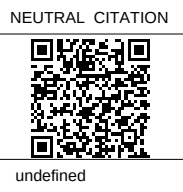
17. It is true that length of delay is not material while adjudicating delay application but at the same time it is *sine qua non* that the applicant should make out sufficient cause seeking condonation of delay which is inherently lacking in the present case. When there is long and inordinate delay, the Court needs to consider explanation coming forth from the applicant as to what reason prevented applicant not to



file appropriate legal proceeding including restoration (in case on hand). When the Court reached to its conclusion, having not found any sufficient cause in not filing restoration application in time, no error much less any gross or jurisdictional error found to have been committed by the Court.

18. Lastly, as regards the submissions made by the learned advocate for the petitioner that the applications being CMA No. 78 & 79 of 2004 having filed under Section 34 of the Act, 1996 which can't be dismissed for non-prosecution, such an argument is not tenable in eye of law, inasmuch as there is no express bar under the Act, 1996 not to dismiss such applications for non-prosecution. True, Section 19 of the Act, 1996 would suggests that Arbitration Tribunal not bound by the provisions of CPC and Evidence Act. It would not mean that the Court is powerless to dismiss the matter for non-prosecution, when party not turn up and pursue its case. According to my view, every Court has such power to dismiss/reject the matter for non-prosecution, unless specifically/expressly barred under any law. Hence, such argument is not sustainable in law, which requires outright rejection, thus, it is rejected.

19. At this stage, it is apt to rely upon the decision of



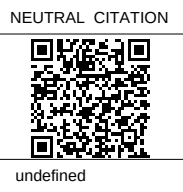
Honourable Supreme Court of India in a case of **Rajneesh Kumar & Anr V/S Ved Prakash reported in 2024 (14) SCALE 406** wherein held as under:

"[10] It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial Court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the Court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the Court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

[12] As regards the law of limitation, we may refer to the decision of this Court in *Bharat Barrel & Drum MFG Co. v. The Employees State Insurance Corporation*, 1971 2 SCC 860, wherein this Court held as under:-

*"The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maxim *maximum vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims."*

(Emphasis supplied)

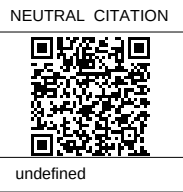


19.1 It is apposite to refer to and rely upon a recent decision of the Hon'ble Supreme Court of India in the case of **K.B. Lal (Krishna Bahadur Lal) v. Gyanendra Pratap & Ors.**, reported in **2024 (4) Scale 759**, wherein, after revisiting the law on the aspect of condonation of delay, the Hon'ble Apex Court has held as under:

"10. There is no gainsaying the fact that the discretionary power of a Court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.



21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

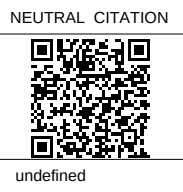
21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted, or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation."*

(Emphasis supplied)

19.2 It is also profitable to refer to and rely upon ratio laid down by recent past decision of Honourable Supreme Court of India in a case of ***Pathapati Subba Reddy (Died) BY L RS & ORS V/S Special Deputy Collector (LA) reported in 2024 INSC 286 : 2024 (4) SCR 241 : 2024 (4) Scale 846*** wherein after referring to its previous decisions, summarized



the case law on the issue of limitation vis-a-vis condonation of delay in context of "sufficient cause". It has been so observed and held as under.

"[26] On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

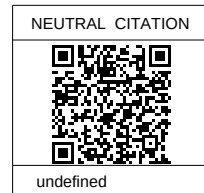
(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

(Emphasis supplied)

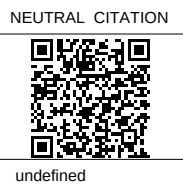


19.3 It is also profitable to rely upon the decision of the Hon'ble Supreme Court of India in the case of **Basawaraj and Another v. Special Land Acquisition Officer** reported in **2013 (14) SCC 81** wherein it is held as under:-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the Court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

(Emphasis supplied)

19.4 Last but not least, recently also, the Hon'ble Supreme Court in the case of **Shivamma (DEAD) By Lrs Vs. Karnataka Housing Board & Ors. reported In 2025 INSC 1104** in clear terms held that where there is delay/laches on the part of the applicant in not prosecuting the legal remedy, in the absence of any sufficient cause made out by the applicant, the Court should not condone the delay while exercising its power under Section 5 of the Limitation Act,

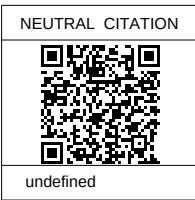


1963. In the case of **Shivamma (Supra)**, the Hon'ble Supreme Court held thus:-

“258. The length of the delay is a relevant matter which the Court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the Court must not start with the merits of the main matter. The Court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into aid the merits of the matter for the purpose of condoning the delay.”

(emphasis supplied)

20. Lastly, this Court, while exercising its powers under Article 227 of the Constitution of India, cannot interfere with every order passed by the trial Court at a drop of the hat. Its now settled that merely because a second view is possible, it would not be ground to interfere. As such, there is no possibility of taking another view than taken by the Court. **[See : Sameer Suresh Gupta TR PA Holder vs. Rahul Kumar Agarwal, reported in (2013) 9 SCC 374 (Para 6 and 7) and Garment Craft v. Prakash Chand Goel, reported in (2022) 4 SCC 181 (Para 15 and 16)].**



21. Thus, in view of the ratio laid down by the Hon'ble Apex Court in the aforementioned decisions, if applied to the facts of the present case on hand, it would lead to only one conclusion that once petitioner found grossly negligent in prosecuting his legal remedy, in that circumstances, the delay application could not have been allowed on any condition which is correctly not allowed by the trial Court.

Conclusion

22. In view of the foregoing observations, discussions, and reasons, the present writ applications having found bereft of merit, require to be rejected, which are hereby rejected.

23. Consequently, the impugned common order dated 07/01/2023 passed by the City Civil Judge, Ahmedabad in CMA Nos. 172 & 178 of 2016 are hereby confirmed.

24. Rule is hereby discharged. No order as to costs.

(MAULIK J.SHELAT,J)

SALIM/