



118

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-4847-2025 (O&M)
Date of decision: 04.09.2025**

**PRINTING DEPARTMENT THIRUVANANTHAPURAM THROUGH
ITS DIRECTOR**

...Appellant(s)

VERSUS

M/S ACME SALES CORPORATION

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. K. Gopalakrishna Kurup, Advocate General, Kerala with
Mr. K. V. Manoj Kumar, Senior Government Pleader, Kerala,
Mr. Parampreet Singh Brar, Advocate and
Mr. Vishal Tartyal, Advocate for the appellant.

JASGURPREET SINGH PURI, J. (Oral)

CM-15801-CII-2025

Prayer in this application is for condonation of delay of 30 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 30 days in filing the present appeal, is hereby condoned.

FAO-4847-2025

1. The present appeal has been filed by the appellant impugning the order dated 24.02.2025 passed by the learned Additional District Judge, Amritsar, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') were dismissed.



2. Mr. K. Gopalakrishna Kurup, learned Advocate General, Kerala with Mr. K. V. Manoj Kumar, Senior Government Pleader, Kerala and Mr. Parampreet Singh Brar, Advocate appearing on behalf of the appellant while giving the brief facts of the case submitted that a dispute arose between the appellant and the respondent, which was considered and referred under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act') and an award was passed against the appellant under the aforesaid Act on 28.07.2022. He further submitted that the aforesaid award was an *ex parte* award and thereafter, the appellant filed objections under the provisions of Section 34 of the Act before the learned Additional District Judge, Amritsar seeking setting aside of the aforesaid award dated 28.07.2022.

3. He further submitted that the aforesaid objections under Section 34 of the Act were admittedly filed with a delay of 108 days. He further submitted that the aforesaid award was received by the appellant on 17.08.2022 and the objections under Section 34 of the Act were filed on 03.12.2022 and in this way, although the period of limitation of three months had expired but the objections under Section 34 of the Act were filed within next 30 days and in any case, it was less than 120 days and therefore, one of the grounds on the basis of which the objections were dismissed i.e. on the ground of delay in filing the objections under Section 34 of the Act, was erroneous because it was within the power and jurisdiction of the learned Additional District Judge, Amritsar to have considered the same even after the expiry of three months since admittedly the objections were filed prior to expiry of 120 days.



4. He further submitted that at the time of filing the objections under Section 34 of the Act or even thereafter, no separate application was filed seeking condonation of delay under the proviso to sub-section 3 of Section 34 of the Act but at the same time, the Court proceeded with the objections on the issue of deposit of 75% of the awarded amount, which is a pre-requisite under Section 19 of the MSMED Act and even an interim order was also passed but thereafter, when the impugned order was passed, the objections under Section 34 of the Act were dismissed not only on the ground of delay under sub-section 3 of Section 34 of the Act but also on the ground that the aforesaid 75% amount which was deposited by the appellant did not contain the interest component, which was also the requirement of law that 75% of the amount must include both principal and interest amount. He further submitted that once the learned Additional District Judge, Amritsar has processed the case and considered the applicability of Section 19 of the MSMED Act for the purpose of pre-deposit then in that situation the appellant could not have been non-suited on the ground of delay because after processing the case, even if it was delayed beyond three months and even if no such application was filed under proviso to sub-section 3 of Section 34 of the Act, the same could not have been dismissed on the ground of delay.

5. He referred to the judgment passed by Karnataka High Court in *M.N.G. Krishnaiah versus Ganeshappa, ILR 1999 KAR 3762* to contend that under Order XLI Rule 3A of CPC, which also deals with the application for condonation of delay, the Court cannot instantaneously dismiss an appeal and a notice has to be issued for curing the defect. He further referred to the judgment



passed by Hon'ble Supreme Court in *State of A.P. versus I. Chandrasekhara Reddy and others, (1998) 7 SCC 141* to contend that once the Court has proceeded to consider and decide the issue on merits of the case then the same cannot be, at that stage, dismissed on the ground of limitation and therefore, by way of the aforesaid impugned order, the learned Additional District Judge, Amritsar could not have dismissed the objections filed under Section 34 of the Act on the ground of delay.

6. I have heard the learned Advocate General, Kerala appearing on behalf of the appellant.

7. Some of the facts pertaining to the dates are not in dispute. The award was passed on 28.07.2022 and as per the learned Advocate General, Kerala appearing on behalf of the appellant, the same was received by the appellant on 17.08.2022. The period of limitation of three months expired on 17.11.2022 and the application under Section 34 of the Act was filed on 03.12.2022, which was therefore after the expiry of three months but before the expiry of further period of thirty days. Furthermore, it is also an admitted position that the appellant did not file any application for condonation of delay under the proviso to sub-section 3 of Section 34 of the Act.

8. In this regard, a specific query was raised by this Court to the learned Advocate General, Kerala appearing on behalf of the appellant on 18.08.2025, who upon seeking instructions has stated today that no such application has been filed for condonation of delay for invoking proviso to sub-section 3 of Section 34 of the Act and even no such application has been filed till date. In this way, the proceeding before the learned Additional District



Judge, Amritsar remained pending from the date of filing the objections under Section 34 of the Act i.e. 03.12.2022 till the passing of the present impugned order on 24.02.2025, which comes out to be approximately two years and three months.

9. It was an argument raised by the learned Advocate General appearing on behalf of the appellant that since the learned Additional District Judge, Amritsar has already proceeded with the case and has considered the issue pertaining to pre-deposit of 75% of the awarded amount under Section 19 of the MSMED Act, the objections under Section 34 of the Act could not have been dismissed on the ground of delay. However, a perusal of the aforesaid impugned order would show that the learned Court had been dealing with the issue of pre-deposit of 75% of the awarded amount as well as delay but the learned Additional District Judge, Amritsar never proceeded to hear the case on merits. It appears that it was only at the preliminary stage of maintainability on both the grounds i.e. of pre-deposit of 75% of awarded amount and delay that the aforesaid impugned order has been passed and not after hearing the case on merits. Reliance was placed by the learned Advocate General appearing on behalf of the appellant on the judgment passed by Hon'ble Supreme Court in *State of A.P. versus I. Chandrasekhara Reddy and others's case (Supra)*, wherein the objections filed under Section 34 of the Act were considered in detail and decided on merits and therefore, it was so held that the delay aspect will pale into insignificance. However, the same is not the position in the present case and therefore, clearly the aforesaid judgment is distinguishable from the present case. Another judgment which was relied upon by the learned



Advocate General appearing on behalf of the appellant was passed by the Karnataka High Court in **M.N.G. Krishnaiah versus Ganeshappa's case (Supra)**, which was not under the Arbitration and Conciliation Act, 1996 and the scope of Order XLI Rule 3A of CPC was discussed. The provision of Order XLI Rule 3A of CPC provides that when an appeal is presented after the expiry of the period of limitation specified, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period. In the present case, admittedly there is no application filed by the appellant seeking condonation of delay for invoking proviso to sub-section 3 of Section 34 of the Act. Furthermore, even during the pendency of the matter before the learned Additional District Judge, Amritsar, which remained at the preliminary stage for about two years and three months, no such application was filed by the appellant till the passing of the present impugned order on 24.02.2025 and therefore, the aforesaid judgment as relied upon by the learned Advocate General appearing on behalf of the appellant is also distinguishable from the present case.

10. So far as the effect of delay under the provisions of Arbitration and Conciliation Act, 1996, which is a special statute, is concerned, the law in this regard is no longer *res integra*. Hon'ble Supreme Court in **Mahindra and Mahindra Financial Services Limited versus Maheshbhai Tinabhai Rathod and others, (2022) 4 SCC 162**, while referring to the previous case law dealt with this issue pertaining to the applicability of Section 5 of the Limitation Act upon Section 34 of the Act. Although the present is not a case where an



application was required to have been filed under Section 5 of the Limitation Act because an application could have been filed under the proviso to sub-section 3 of Section 34 of the Act. However, it was an admitted position that no such application was filed under the proviso to sub-section 3 of Section 34 of the Act at all. It was so held by Hon'ble Supreme Court in the aforesaid judgment that the scope available for condonation of delay being self-contained in the proviso to Section 34(3) of the Act and Section 5 of the Limitation Act not being applicable has been taken note by the Court in its earlier decisions as well and thereafter, referred to another judgment passed by Hon'ble Supreme Court in **Union of India versus Popular Construction Co., (2001) 8 SCC 470.** The relevant portion of the aforesaid judgment passed by Hon'ble Supreme Court in **Mahindra and Mahindra Financial Services Limited's case (Supra)** is reproduced as under:-

“9. The scope available for condonation of delay being self-contained in the proviso to Section 34(3) and Section 5 of Limitation Act not being applicable has been taken note by this Court in its earlier decisions, which we may note. In Union of India vs. Popular Construction Co. it has been held as hereunder: (SCC pp.474-76, paras 12, 14 & 16)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.



*

*

*

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendable by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need “to minimise the supervisory role of courts in the arbitral process”. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

xxx-xxx-xxx-xxx

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that subsection. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

xxx-xxx-xxx-xxx

9.1 Further, in State of H.P. v. Himachal Techno Engineers, it was noted and held as hereunder: (SCC pp.211-12, paras 2 & 5)

xxx-xxx-xxx-xxx

5. Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under Section 34 of the Act. While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act



places a limit on the period of condonable delay by using the words “may entertain the application within a further period of thirty days, but not thereafter”. Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.”

9.2 The same view was taken by this Court in P. Radha Bai v. P. Ashok Kumar, wherein this Court held as follows: (SCC pp.457-58, para 33)

“33.2. The proviso to Section 34 (3) enables a court to entertain an application to challenge an award after the three months’ period is expired, but only within an additional period of thirty dates, “but not thereafter”. The use of the phrase “but not thereafter” shows that the 120 days’ period is the outer boundary for challenging an award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. This Court has consistently taken this view that the words “but not thereafter” in the proviso of Section 34(3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt.

9.3 The observations of this Court in different decisions relating to nonapplicability of Section 5 of the Limitation Act in condoning the delay and extending the limitation prescribed under Section 34(3) of Act 1996 was taken note of by a bench of three Hon’ble Judges of this Court with approval, in Chintels (India) Limited v. Bhayana Builders Ltd.”

xxx-xxx-xxx-xxx

11. During the course of arguments, the learned Advocate General also referred to the language provided in the proviso to sub-section 3 of Section 34 of the Act. The aforesaid Section 34(3) of the Act is reproduced as under:-



34(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

12. Learned Advocate General appearing on behalf of the appellant submitted that as per the language used in the aforesaid proviso, it provides that the Court may entertain the application within a further period and therefore, it is discretionary in nature. He further submitted that once the provision is discretionary in nature then even if there was no application filed by the appellant, the Court ought to have considered the same. He also submitted that at the time of filing the objections under Section 34 of the Act, it was the duty of the Court and the Court staff to have pointed out to the appellant that an application was required to be filed under the aforesaid proviso.

13. This Court is of the considered view that both the aforesaid arguments raised by the learned Advocate General appearing on behalf of the appellant are misconceived. A bare perusal of the aforesaid proviso would show that even if it is so provided that the Court may entertain the application in its discretion but it is subject to the condition that the Court has to be satisfied that the applicant was prevented by sufficient cause from making the application under Section 34 of the Act within the period of three months. The Court can



always arrive at a satisfaction regarding the sufficient cause only when an application is preferred but the same cannot be arrived at in vacuum. In the absence of any application at all, the Court cannot arrive at a satisfaction with regard to the sufficient cause to be shown. In other words, the ingredients of the proviso pertaining to sufficient cause and satisfaction of the Court are the conditions precedent and *sine qua non* for the purpose of invoking the proviso to sub-section 3 of Section 34 of the Act. It is only after the satisfaction being arrived at based upon the application so made that the Court has a discretion to condone 30 days delay and therefore, all the ingredients of the aforesaid proviso are co-existent. They are inclusive in nature and they do not exclude each other. Therefore, the argument raised by the learned Advocate General is misconceived. The second argument raised by the learned Advocate General, Kerala that it was the duty of the Court or the Court staff to have asked the appellant to have filed the application for condonation of delay is also not sustainable because no law provides for the same particularly when the Arbitration and Conciliation Act, 1996 is a self-contained code and is a special legislation.

14. Reference can be made in this regard to the judgment passed by Delhi High Court in **Sravanthi Infratech Private Limited versus Greens Power Equipment (China) Co. Ltd., 2016 SCC Online Del 5645**, wherein also no application was filed for condonation of delay by virtue of proviso to sub-section 3 of Section 34 of the Act after the expiry of 90 days. The relevant portion of the aforesaid judgment is reproduced as under:-

“14.Having considered the submissions of the learned counsel for the parties, the Court is of the view that although



the number of days delay in filing the petition was 17 days, even if the date of receipt is taken as 24th March, 2015 as claimed by the Petitioner what was filed could not be considered as a petition. What was filed was a petition without a vakalatnama, without an affidavit, without signature of the party on the petition. These are fatal defects and what was filed on 10th July, 2015 can hardly be considered a proper filing of the petition with there being no documents, no vakalatnama, no application for condonation of delay, no affidavit, no authority.

15. Secondly, despite knowing that initial limitation of 90 days in terms of Section 34(3) of the Act had expired on 23rd June, 2015 even according to the Petitioner, the petition was filed only on 10th July, 2015. Thus, the Petitioner knew on that date itself that the petition was beyond the 90 days limitation period. The Petitioner ought to have filed an application for condonation of delay on the very date that the petition were filed, i.e. 10th July, 2015.

16. Thirdly, the Petitioner also did not pursue the matter diligently despite knowing that the outer limit of 120 days was expiring on 22nd July, 2015 and no attempt was made to cure the defects before 12th August, 2015, the date on which 30 days period for curing the defects as per Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders expired. The defects were not cured up to 18th August, 2015. It was only then that a petition containing 859 pages was filed. When this was compared with the 66 page petition, it confirmed the suspicion that what was initially filed was neither a comprehensive nor a properly signed petition.



19. The Court is not expected to mechanically condone the delay in filing the petition in terms of the proviso to Section 34(3) of the Act. It can only be upon the Petitioner satisfying that the delay was for bona fide reasons can the Court proceed to condone the delay. In the present case the Court is unable to be persuaded to hold that the delay in filing and re-filing the petition was for bona fide reasons.

.xxx-xxx-xxx-xxx

15. Considering the aforesaid facts and circumstances, this Court does not find any merit in the present appeal and the same is hereby dismissed.

04.09.2025
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No