

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5332 OF 2017

(SPECIAL LEAVE PETITION (CIVIL)NO.12338 ...CC NO. 6737 OF 2017)

Haryana State Cooperative Labour
and Construction Federation Ltd.

.... Appellant

Versus

Unique Cooperative Labour and
Construction Cooperative Society Ltd. & Anr.

.... Respondents

WITH

**SPECIAL LEAVE PETITION (CIVIL)Nos.12348-12349.... CC NOS.
7305-7306 OF 2017**

Haryana State Cooperative Labour
and Construction Federation Ltd.

.... Petitioner

Versus

Unique Cooperative Labour and
Construction Cooperative Society Ltd. & Ors.

.... Respondents

ORDER

Jagdish Singh Khehar, CJI.

Civil Appeal No.5332 of 2017

(Special Leave Petition (Civil)No.12338... CC No. 6737 of 2017)

1. Delay of 61 days in filing SLP (C)12338.... CC no. 6737 of 2017 is

condoned.

2. Leave granted.

3. The appellant - Haryana State Cooperative Labour and Construction Federation Ltd. (hereinafter referred to as, the Haryana Federation), was engaged in the execution of Government works. In turn, the Haryana Federation got the Government works, assigned to it, executed from different labour cooperative societies, by effecting individual contractual agreement(s), with the societies.

4. In 1981, the Haryana Federation was assigned the work of construction of low income group houses (numbering 58, 76 and 82), in Sector 15, Panchkula, Haryana, by the Haryana Housing Board. The Haryana Federation, entered into three separate construction contracts, for the execution of the above works, with respondent no. 1 - Unique Cooperative Labour and Construction Cooperative Society Ltd. (hereinafter referred to as, the Construction Society), on 20.7.1981.

5. By a different contractual agreement dated 2.11.1981, the Haryana Federation also allotted construction work of a sports complex located at Murthal, Haryana, to the Construction Society. This work had been allotted to the Haryana Federation, by the Haryana State Industrial Development Corporation.

6. The Haryana Federation referred three disputes against the work awarding agency - the Haryana Housing Board, to the Registrar, Cooperative Societies, Haryana. The above three disputes, pertained to the construction of 58, 76 and 82 low income group houses, in Sector 15,

Panchkula, Haryana. Shri M.L. Dhami, Superintending Engineer (Retd.), PWD (B&R), was appointed as the sole Arbitrator. The Arbitrator having adjudicated upon all the three disputes, passed three different awards, on 28.12.1987. By the aforesaid awards, the Arbitrator held the Haryana Federation, entitled to amounts of Rs.95,328/-, Rs.1,05,240/- and Rs.1,11,750/-, payable by the Haryana Housing Board. It is not a matter of dispute, that the Haryana Housing Board honoured the awarded amounts, and released the entire payment in consonance with the awards, to the Haryana Federation, on 18.9.1989. It is also not a matter of dispute, that the payment received by the Haryana Federation, was transmitted by it, to the Construction Society.

7. The Construction Society raised a separate dispute, in connection with the contractual agreement dated 20.7.1981. Based on the dispute raised by the Construction Society, the Registrar, Cooperative Societies, Haryana, appointed Shri P.S. Rawat, Superintending Engineer (Retd.), Haryana State Agricultural Marketing Board, Haryana, as Arbitrator for the adjudication of the claim. Arbitration proceedings which commenced on 2.11.2007, culminated in an award dated 20.2.2008.

8. The above award dated 20.2.2008 was assailed by the Haryana Federation, before the Registrar, Cooperative Societies, Haryana, by way of an appeal under Section 114 of the Haryana Cooperative Societies Act. The Registrar, Cooperative Societies, Haryana, dismissed the appeal on 15.4.2010 by holding that the same was not maintainable. The Registrar, Cooperative Societies, Haryana, while recording his conclusions opined,

that the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, the Arbitration Act), were available to the Haryana Federation, and accordingly granted liberty to it, to approach a Civil Court under the appropriate provisions, in consonance with law. Unmindful of the determination rendered by the Registrar, Cooperative Societies, Haryana, as also, in complete disregard of the liberty granted to it, to assail the award dated 20.2.2008, in consonance with the provisions of the Arbitration Act, the Haryana Federation filed a revision petition before the Principal Secretary, Department of Cooperation, Government of Haryana, under Section 115 of the Haryana Cooperative Societies Act. The instant revision petition was dismissed on 3.8.2011. While dismissing the revision petition, the revisional authority upheld the order passed by the appellate authority, holding that the appeal preferred by the Haryana Federation (to assail the award dated 20.2.2008), was not maintainable. The appellate order dated 15.4.2010 passed by the Registrar, Cooperative Societies, Haryana, and the revisional order dated 3.8.2011 passed by the Principal Secretary, Department of Cooperation, Government of Haryana, were then assailed by the Haryana Federation, by invoking the jurisdiction of the Punjab & Haryana High Court at Chandigarh (hereinafter referred to as, the High Court) under Article 226/227 of the Constitution of India. The writ petition bearing no. 20055 of 2011, preferred by the Haryana Federation, was dismissed by the High Court on 3.12.2012. The order dated 3.12.2012 passed by the High Court, dismissing Writ Petition no. 20055 of 2011, was assailed by the Haryana Federation by preferring

Letters Patent Appeal (LPA) no. 955 of 2013, before a division bench of the High Court. The intra-Court appeal preferred by the Haryana Federation, was dismissed on 15.5.2013. Dissatisfied with the determination rendered by the High Court, the Haryana Federation took a conscious decision to prefer a review application being R.A. no. 1 of 2013 in LPA no. 955 of 2013. The aforesaid review application, which was filed on 18.12.2013, was dismissed on 24.1.2014.

9. Having sought recourse to the judicial process five times over, so as to impugn the arbitral award dated 20.2.2008, before the appellate authority - Registrar, Cooperative Societies, Haryana, the revisional authority - the Principal Secretary, Department of Cooperation, Government of Haryana, before the High Court - through Writ Petition no. 20055 of 2011, and then before the Letters Patent Bench - through LPA no. 955 of 2013, and thereafter, by preferring R.A. no. 1 of 2013 in LPA no. 955 of 2013, the Haryana Federation eventually filed objections under Section 34 of the Arbitration Act. It would be relevant to mention, that on each occasion in almost all the orders referred to above, the Haryana Federation was made aware, that the impugned award dated 20.2.2008, could be assailed under the Arbitration Act.

10. By the time the Haryana Federation filed objections under Section 34 of the Arbitration Act, before the District Judge, Panchkula, in its effort to assail the award dated 20.2.2008, there was a delay of 5 years and 8 months. Under the Arbitration Act, the period of limitation postulated for assailing an arbitral award, is provided for under Section 34 of the

Arbitration Act. Section 34 aforementioned is reproduced hereunder:-

“34. Application for setting aside arbitral award. - (1) 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).

(2) An arbitral award may be set aside by the Court only if-

(a) The party making the application furnishes proof that-

(i) A party was under some incapacity, or

(ii) The arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) The Court finds that-

(i) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) The arbitral award is in conflict with the public policy of India.

Explanation 1. - For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or

justice.

Explanation 2. – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(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.

(4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

(emphasis is ours)

A perusal of Section 34(3) leaves no room for any doubt, that an arbitral award has to be assailed within a period of 3 months, whereafter, condonation of delay is permissible only for a further period of 30 days. Delay beyond 3 months and 30 days is not condoned. This position has repeatedly been reiterated by this Court, and was dealt with in extensive

detail, by the Additional District Judge, Panchkula, in the order dated 17.5.2014, by which the objections filed by the appellant were dismissed by concluding, that "... on the basis of the well settled propositions of law, which have been discussed and laid down as referred above, this Court has arrived at a definite conclusion that the application in question is not maintainable and delay cannot be condoned for filing the objections under Section 34...".

11. During the course of hearing, we had enquired from the learned counsel for the appellant, whether delay beyond the period of 3 months and 30 days was condonable. He very fairly acknowledged, that the delay beyond the period expressed above was not condonable. It may well be, that there was some ambiguity in the mind of the Haryana Federation, that it could take recourse to Section 14 of the Limitation Act, for having erroneously approached a wrong forum. Even if we assume the aforesaid understanding as a correct perception, even then, the position indicated in the pleadings leaves no room for any doubt, that the delay with which the Haryana Federation had filed its objections, under Section 34 of the Arbitration Act, was far far in excess of 3 months and 30 days. The Additional District Judge, Panchkula, vide order dated 17.5.2014, dismissed the objections filed by the Haryana Federation, even after taking into consideration the above aspect, by observing as under:-

"8. The objector/applicant has preferred the objections under Section 34 of the Act against the Award dated 20.2.2008 passed by the respondent no. 2, the sole Arbitrator. The applicant has preferred the objections before this Court on 20.1.2014. Admittedly,

the objections have not been preferred within time as envisaged in the Arbitration and Conciliation Act, 1996. In the application for condonation of delay, it has been averred by the applicant that against the Award in question, the Federation/applicant filed an appeal under the provisions of the Haryana Cooperative Societies Act, 1984 before the Registrar, Cooperative Societies, Haryana in the year 2008 itself which once stayed the execution of the Award but later on dismissed the said appeal vide order dated 15.4.2010. Challenge to the Award was made by the applicant also before the Hon'ble Punjab & Haryana High Court by preferring CWP which was dismissed on 3.12.2012. Thereafter, the applicant went in LPA which was also dismissed on 15.5.2013. Meaning thereby, the last verdict was passed against the applicant on 15.5.2013. In order to bring its case within the ambit of section 14 of the Limitation Act, 1963, it has also averred that the Federation/applicant on the advice of its Advocate filed a review petition against the order dated 15.5.2013 but the same was also dismissed. To my mind, the cause of action for filing of the objections could be considered to have been accrued to the applicant on the decision of the Hon'ble Punjab & Haryana High Court dated 15.5.2013. Section 14 of the Limitation Act is a hard task master and it should not be set into operation very lightly and in a routine manner. In Madhuroo N. Patwardhan versus Ram Kishan, AIR 1958 SC 767, it was held that the following conditions must be satisfied by the applicant for bringing its case within the four corners of section 14 of the Act (supra): that he had been prosecuting the previous suit with due diligence and in good faith; that the matter in issue in the previous suit and the new suit are the same; that the Court was unable to entertain that suit on account of defect of jurisdiction or other cause of a like nature. But, in the instant case, none of the above referred conditions have been fulfilled by the applicant by virtue of which the period which has been spent by it in prosecuting the litigation before the other Courts could be excluded. As such, by no stretch of imagination, it can be held that the section 14 of the Act (supra) is (sic) applicable to the facts of the case.

9. Furthermore, now it is to be seen as to whether there is any scope to condone the delay for preferring the objections by the applicant. The controversy was set at rest by the Hon'ble Supreme Court of India in case Union of India versus M/s. Popular Construction Co. (supra), wherein it was held that the Court cannot condone delay in exercise of its discretion under section 5 of the Limitation Act in filing application under section 34 of the Act, 1996. Further, in case Senior Executive Engineer versus M/s. Minhas Builders, 2010 (4) CCC 374 (P&H), it was held that where there is delay in filing objections to Arbitration Award then period of limitation cannot be extended even by invoking section 5 of the Act.

10. Now turning to the case in hand, on the basis of the well

settled propositions of law which have been discussed and laid down as referred above, this Court has arrived at a definite conclusion that the application in question is not maintainable and delay cannot be condoned for filing the objections under section 34 of the Act, 1996. Accordingly, the application is devoid of merit and is hereby dismissed. Since the application for condonation of delay is dismissed, therefore, the objection petition under section 34 of the Act, 1996, being maintained by the objector/petitioner is also not maintainable.”

(emphasis is ours)

12. Dissatisfied with the order dated 17.5.2014, the Haryana Federation preferred FAO no. 4560 of 2014 before the High Court. The above FAO was dismissed on 30.9.2016. On the issue, whether the appellant was entitled to the benefit of Section 14 of the Limitation Act, the High Court in the impugned order dated 30.9.2016, while dismissing FAO no. 4560 of 2014, observed as under:-

“I have heard the learned counsel for the parties and appraised the paper book and of the view that the objections have rightly been dismissed being barred by law of limitation as the LPA was dismissed on 15.5.2013, whereas the review application was filed on 19.12.2013. By that time, the period of 90 days + 30 days (grace period) = 120 days had elapsed. No explanation has come forth in filing the review application in the month of December, 2013. Had it been so, perhaps there would have been a force in the submissions of Mr. Karan Bhardwaj that the objections were within the limitation period, but the factual aspect as noticed above is contrary to what has been submitted by Mr. Bhardwaj. I am of the view that order under challenge is perfect, legal and justified. No ground is made out for interference and accordingly, the appeal is dismissed.”

(emphasis is ours)

During the course of hearing learned counsel for the appellant could not controvert or dispute the factual or legal position expressed by the High Court, in its order dated 30.9.2016.

13. After availing of five remedies to assail the arbitral award dated 20.2.2008, summarized in paragraph 9 above, the appellant sought 3 more remedies, firstly, before the Additional District Judge, Panchkula, under Section 34 of the Arbitration Act, which was rejected on 17.5.2014, then by preferring FAO no. 4560 of 2014, which was dismissed on 30.9.2016, and finally before this Court, through the instant Civil Appeal no.5332 of 2017 (arising out of SLP (C)No.12338.... CC no. 6737 of 2017). All the remedies availed of by the Haryana Federation, as noticed above were totally frivolous. The Haryana Federation ought to have, with the least application of mind, been aware of the outcome, even before the remedies were availed of. The position of law, on the issue(s) which arise in this case, has been declared by this Court repeatedly, and the same was confirmed by the learned counsel for the Haryana Federation, who fairly acknowledged the same.

14. At each juncture, when the judicial process was invoked by the Haryana Federation, detailed orders came to be passed eight times over. Had the Haryana Federation approached the rightful court, with reference to which the said federation's attention was repeatedly drawn, on almost each of the first five occasions, when it attempted to assail the arbitral award - dated 20.2.2008, it may have well been entitled to some relief. It is difficult to figure out why the wrong forum was chosen. Any observation(s) on this aspect of the matter, would fall in the realm of conjecture. Insofar as the computation of the period of limitation contemplated under Section 34 of the Arbitration Act is concerned, it was

acknowledged by the learned counsel for the appellant himself, that the period of limitation, to file objections against an award, could not extend beyond 3 months and 30 days. Why were the objections filed in any case, after the Haryana Federation had occasioned a delay of 5 years and 8 months, despite being fully aware of the fact, that even the exclusion of the period spent before different authorities/Courts would not salvage the situation for the appellant? Having attained a clear and unambiguous determination vide order dated 17.5.2014 passed by the Additional District Judge, Panchkula (after the appellant preferred objections under Section 34 of the Arbitration Act), there remained absolutely no justification for the Haryana Federation to continue to avail the judicial redress, firstly, before the High Court, and then, before this Court. Failure before each forum was imminent, and that was the eventual result. Why then did the Haryana Federation, repeatedly seek judicial redress? Was it only for the purpose of demonstrating, that despite its efforts, it could not get any relief from the judicial fora? Did the Haryana Federation only seek a judicial certification? If the answers to the aforesaid are in the affirmative, which is our considered view, then the reason for the backlog of arrears in Courts, is not far to fetch. This abuse of the judicial process must stop. In a similar situation, this Court in Dnyandeo Sabaji Naik vs. Mrs. Pradnya Prakash Khadekar, in SLP (C) nos. 25331-33 of 2015, decided on 1.3.2017, observed as under: -

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be

seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

15. In the facts and circumstances of the case, we are of the considered view, that the instant appeal deserves to be dismissed with exemplary costs, on account of the abuse of the judicial process, by the appellant - the Haryana Federation. Accordingly, the appeal is dismissed with costs quantified at Rs.5,00,000/- (Rupees five lakhs). The aforesaid costs shall be deposited by the Haryana Federation with the Supreme Court Advocates-on-Record Welfare Trust, within one month. In case the costs are not deposited within the time indicated hereinabove, the Registry shall re-list the matter for an open Court hearing for recovery of costs.

Special Leave Petition (Civil)12348-12349.... CC Nos. 7305-7306 OF 2017

1. The instant petitions have been filed with a delay of 1297 and 1043 days respectively. We find no justifiable ground in the application for condonation of delay. We therefore decline to condone the delay.

2. Even on merits, the instant petitions have no substance. We have expressed our view on merits, in an almost identical matter, concerning the same petitioner, while disposing of Civil Appeal no.5332 of 2017 (arising out of SLP (C)No.12338.... CC no. 6737 of 2017) with which the instant matters are tagged. For the same reasons, as have already been expressed by us, in the matter with which these cases are tagged, we are of the view, that the instant petitions also deserve to be dismissed with costs of Rs.5,00,000/- (Rupees five lakhs). Ordered accordingly. The costs shall be deposited by the petitioner, with the Supreme Court Advocates-on-Record Welfare Trust, within one month. In case the costs

are not deposited within the time indicated hereinabove, the Registry shall re-list the matter for an open Court hearing for recovery of costs.

3. The present petitions are therefore, dismissed both on the ground of delay, as well as on merits.

.....CJI
(Jagdish Singh Khehar)

.....J.
(Dr. D.Y. Chandrachud)

.....J.
(Sanjay Kishan Kaul)

New Delhi;
April 07, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Item No.13 :

Petition(s) for Special Leave to Appeal (C)No...../2017
(CC No(s).6737/2017)

(Arising out of impugned final judgment and order dated 30/09/2016 in FAO No.4560/2014 (O&M) passed by the High Court Of Punjab & Haryana At Chandigarh)

HARYANA STATE COOPERATIVE LABOUR AND CONSTRUCTION
FEDERATION LTD.

Petitioner(s)

VERSUS

UNIQUE COOPERATIVE LABOUR AND CONSTRUCTION
COOPERATIVE SOCIETY LTD AND ANR.
(With appln.(s) for c/delay in filing SLP)

Respondent(s)

Item No.33 :

SLP(C)Nos.7305-7306/2017
(With appln.(s) for c/delay in filing SLP and office report)

Date : 07/04/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Karan Bhardwaj, Adv.
Mr. V.P. Goel, Adv.
Mr. Chander Shekhar Ashri, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

SLP(C)No.....CC No.6737/2017 :

Delay condoned.

Leave granted.

The civil appeal is dismissed in terms of the signed order, with costs quantified at Rs.5,00,000/- (Rupees

Five Lakhs only). The aforesaid costs shall be deposited by the Haryana Federation with the Supreme Court Advocates-on-Record Welfare Trust, within one month. In case the costs are not deposited within the time indicated hereinabove, the Registry shall re-list the matter for an open Court hearing for recovery of costs.

SLP(C)No.....CC Nos.7305-7306/2017

The special leave petitions are dismissed both on the grounds of delay as well as on merits in terms of the signed order, with costs of Rs.5,00,000/- (Rupees Five lakh only). The costs shall be deposited by the petitioner with the Supreme Court Advocates-on-Record Welfare Trust, within one month. In case the costs are not deposited within the time indicated hereinabove, the Registry shall re-list the matter for an open Court hearing for recovery of costs.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)