Present:
Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

Arbitration Appeal No. 24 of 2024

Jess Smith & Sons Cotton LLC
….Decree Holder-Appellant
Versus
Patriot Spinning Mills Ltd.
….Judgment Debtor-Respondent

Mr. Md. Saidul Alam Khan, Advocate with
Ms. Farah Nusrat, Advocate
….For the Appellant

Mr. Muhammad Mustafizur Rahman Khan, Senior Advocate with
Ms. Yasmin Akter, Advocate
….For the Respondent

Judgment on 26.02.2026.

Md. Iqbal Kabir, J:

The instant Arbitration Appeal is directed against the order dated 29.09.2024 passed by the learned District Judge, Dhaka, in Money Execution Case No. 24 of 2023, who disallowed the Appellant's application for condonation of a delay in filing an execution case. The execution case was filed seeking enforcement of a foreign Arbitration Award dated 06.02.2012 for the amount of US$ 511,023.26 with interest. The learned Court below disallowed the application for condonation of delay, holding it barred by limitation.

Short facts narrated in the plaint are that the Respondent, Patriot Spinning Mills Ltd., entered into a sale contract with the Appellant for the purchase of 500 metric tons of American Raw Cotton at USD 204.00 cents per pound. Under the contract, the Respondent was required to open an irrevocable Letter of Credit (LC) in favour of the Appellant through an A-I Bank on or before 25 April 2011, before the shipment months. Before the stipulated date for opening the LC, the international cotton market suffered a drastic price collapse. As a result, the Respondent’s local bank refused to open the LC, citing regulatory restrictions that prohibit opening LCs at prices substantially higher than

the prevailing international market rate. Owing to this supervening regulatory impediment, the Respondent became unable to open the LC as agreed. Upon request, the Appellant initially granted a one-month extension; however, within a few hours on the same day, the Appellant imposed an additional condition requiring 20% prepayment of the contract price. The Respondent could not comply with this condition, as Bangladesh Bank regulations restrict remittance of substantial foreign currency amounts without opening an LC.

Thereafter, the Respondent made repeated attempts to negotiate an amicable settlement, which were acknowledged by the Appellant, and continued efforts to open the LC until 03 June, 2011, but failed due to the continuing regulatory constraints. Consequently, on 04 June, 2011, the Respondent formally communicated its inability to open the LC and requested closure of the contract through “invoicing back” under the ICA Rules. The Appellant, by its email dated 04 June, 2011, treated that date as the final notice for closing the contract. Accordingly, under the ICA Rules, the contract ought to have been settled on the basis of the market price prevailing on 04 June, 2011. In the course of closing the contract, the Appellant allegedly provided unreasonable quotations without due regard to the prevailing market conditions and the loss suffered by the Respondent. Subsequently, on 16 June, 2011, the Appellant initiated arbitration proceedings before the ICA, Liverpool, England, and nominated Mr. Arthur Aldcroft as its arbitrator. Upon the Respondent’s failure to nominate an arbitrator, the ICA appointed Mr. Terry Bromley on behalf of the Respondent, and on 22 July, 2011 appointed Mr. Paul Kinney as Chairman of the Tribunal. The Arbitral Tribunal ultimately passed an award on 06 February 2012 for USD 511,023.26, along with interest.

It is at this juncture, Appellant filed a Money Decree (Arbitration Award) Execution Case No. 24 of 2023 before the learned District Judge, Dhaka under section 45 of the Arbitration Act, 2001 for enforcement and

execution of the Arbitration Award along with an application under section 5 of the Limitation Act read with section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 3155 days in filing the execution application.

However, the Court below, vide its order dated 12-11-2023, provisionally admitted the Execution Application. The Opposite Party submitted a written objection to the Appellants' application for condonation of delay. Upon hearing the same learned Successor Judge who overturned the order of the learned Predecessor Judge and disallowed the Money Execution Case No. 24 of 2023 on being barred by limitation, vide its order dated 29-09-2024.

Being aggrieved by and dissatisfied with the aforesaid Judgment and decree dated 23.09.1999 passed by the District Judge, Dhaka, the decree holder as appellant, preferred the instant First Appeal.

He submits that where a special law prescribes a specific period of limitation, such prescribed period shall prevail over the general limitation provided in the First Schedule of the Limitation Act, 1908. According to him, the Arbitration Act, 2001, being a special statute, does not prescribe any specific period of limitation for filing an application for recognition and enforcement of a foreign arbitral award under section 45 thereof. Section 45(1)(b) of the Arbitration Act provides that a foreign arbitral award shall be enforced in the same manner as if it were a decree of the Court under the Code of Civil Procedure. Therefore, in the absence of any specific limitation period under the Arbitration Act, the limitation applicable to the execution of a decree becomes relevant. Accordingly, the three-year limitation period prescribed under Article 182 of the Limitation Act, 1908, governing the execution of decrees and orders of civil courts, shall apply to an application filed under section 45 of the Arbitration Act.

He submits that section 29(2) of the Limitation Act, 1908, determines the extent to which the provisions of the Limitation Act apply

where a special law prescribes a different period of limitation. The settled position of law is that where a special law prescribes a specific limitation period, provisions such as section 5 of the Limitation Act will apply only to the extent permitted by that special law [Authority shows in 17 SCOB (2023) HCD 57; 42 DLR (1990)]. The Arbitration Act, 2001 does not prescribe any limitation period for applications under section 45 for recognition and enforcement of foreign arbitral awards. Therefore, section 29(2) of the Limitation Act has no restrictive application in the present case. Furthermore, section 55 of the Arbitration Act expressly provides that all provisions of the Limitation Act shall apply to arbitration proceedings. Consequently, the Limitation Act applies in its entirety, including section 5, as there is neither any restriction under the Limitation Act nor any express bar under the Arbitration Act.

He submits that section 5 of the Limitation Act provides that an appeal or application may be admitted after expiry of the prescribed limitation period if the Court is satisfied that there was “sufficient cause**”** for not making the application within time. According to him, section 55 of the Arbitration Act makes the provisions of the Limitation Act applicable; section 5 squarely applies to an application under section 45 of the Arbitration Act, thereby, empowering this Court to condone delay upon sufficient cause being shown.

The Respondent contended that section 5 does not apply to applications for execution of decrees. In this regard, it is respectfully submitted that an application under section 45 of the Arbitration Act cannot be equated with an application for execution under Order XXI of the Code of Civil Procedure. Although section 45 provides that a foreign award shall be enforced “as if” it were a decree, this does not transform the award into a decree nor does it render the enforcement application identical to execution proceedings. Even in jurisdictions such as India, where section 5 of the Limitation Act, 1963 expressly excludes execution proceedings, the Supreme Court of India has held that enforcement of a

foreign arbitral award is a substantive proceeding distinct from execution proceedings, and therefore section 5 may apply [(2020) 10 SCC].

He submits that substantial justice must prevail over technical considerations under the well-established principle and that sufficiency has to be determined considering the facts and circumstances of each case [51 DLR (AD) (1999) 253; 24 BLT (HCD) (2016) 99]. The Appellant is a foreign company based in California, United States, with no office, branch, affiliate, or representative in Bangladesh. Therefore, it did not enjoy the same access to legal assistance in Bangladesh as local litigants. In this context, Courts have recognizeee d that such circumstances justify a liberal approach in considering delay [73 DLR (AD) (2021)]. Upon obtaining the arbitral award in 2012, the Appellant sought legal advice in Bangladesh and was advised that enforcement could be pursued within twelve years, and that efforts should first be made to reach an amicable settlement with the Respondent. Acting bona fide on such advice, the Appellant pursued settlement discussions with the Respondent for several years instead of immediately initiating enforcement proceedings.

According to him, the delay occurred due to an erroneous but bona fide legal opinion that enforcement could be pursued within twelve years by analogy to section 48 of the Code of Civil Procedure. The Appellant, being unfamiliar with Bangladeshi legal procedures, relied entirely on such legal advice and continued settlement discussions accordingly. He claims that under the settled principle of law, a litigant should not suffer for the mistake or negligence of his counsel, as recognized by a decision reported in 28 BLC (AD) (2023) 191, which supersedes the earlier decision reported in 5 DLR (1953) 150 relied upon by the learned District Judge.

He argued the Appellant derived no benefit whatsoever from the delay. According to him, the Appellant could have sought to claim additional interest. Instead, the claim was based on the lower exchange

rate prevailing at the expiry of the limitation, which clearly demonstrates the absence of malafide intention. It cannot, therefore, be presumed that the delay was deliberate or caused by culpable negligence (51 DLR (AD) (1999) 253).

He submits that communications between lawyer and client constitute privileged communication, and non-disclosure of such communication cannot automatically negate the existence of sufficient cause, as held in Girish G. Dube vs. Income Tax Appellate Tribunal (Bombay High Court, 05 August 2022); thus, absence of documentary proof of legal advice cannot be a bar.

He claims that the length of delay is not the decisive factor; the acceptability of the explanation is the determining criterion [(1998) 7 SCC 123]. Section 5 of the Limitation Act confers discretionary power upon the Court to advance substantial justice, and such discretion must be exercised liberally where the delay is neither deliberate nor malafide.

He submits that, earlier, upon hearing the parties and examining the records, the Court condoned the delay and admitted the Money Execution Case by Order No. 02 dated 12.11.2023. Subsequently, the Court reopened the delay condonation issue upon objection by the Respondent and passed the impugned order rejecting the delay condonation application. According to him, once the delay had been condoned and the case admitted, the Court became functus officio in respect of that issue.

Lastly, the alleged refusal to condone delay in the present circumstances would effectively reduce the Appellant's valid arbitral award to a mere paper decree, thereby frustrating the purpose of international arbitration and discouraging international commercial relations with Bangladesh.

Mr. Khan upon placing the section 5 of the Limitation Act, 1908 submits alleged section applies only to the following proceedings: (i) an appeal; (ii) an application for revision; (iii) an application for review of

judgment; (iv) an application for leave to appeal; or (v) any other application to which Section 5 has been expressly made applicable by or under any law for the time being in force. According to him, in the present case, the execution proceeding does not fall within any of the categories enumerated above. It is neither an appeal, nor a revision, nor a review, nor an application for leave to appeal. Therefore, Section 5 can only be invoked if there exists a specific statutory provision extending its applicability to execution proceedings. No such law exists; in particular, no enactment renders Section 5 applicable to an execution case arising out of a foreign arbitral award. Therefore, section 5 of the Limitation Act has no application in the present matter.

He brought our notice that section 45(1)(b) of the Arbitration Act, 2001 puts a foreign arbitral award on a par with a civil decree passed by a Bangladeshi court; the only difference being that its execution is made subject to Section 46 of the Arbitration Act, 2001, which provides for grounds for refusing recognition or execution of foreign arbitral awards. That being the case, the Limitation Act, 1908, shall apply to the instant case in the same manner in which it applied to the execution of a civil decree in Bangladesh. There is no scope for Section 5 of the Limitation Act to apply to the execution of a civil decree in Bangladesh; hence, it cannot also be applicable where the execution case is for the execution of a foreign arbitral award.

In response to the relevance of Section 29 of the Limitation Act, 1908, the Respondent, by submission, brought notice to this court that Section 29(2) of the Limitation Act consists of two parts. The first part concerns the applicability of section 3, and the second part relates to the determination of the period of limitation under a special law. Clause (a) specifies that only certain provisions of the Limitation Act shall apply in determining the period of limitation, while clause (b) provides that “the remaining provisions”, which can only mean “the remaining provisions relating to the question of determination of the period of limitation”, shall

not apply**.** Thus, section 29(2)(a) and (b) collectively indicate that, except for sections 4, 9, 18, and 22 of the Limitation Act, the other provisions of the Act do not apply where a special law prescribes a limitation period.

He argued that section 5 of the Limitation Act does not deal with the determination or computation of the period of limitation, but rather confers a discretionary power upon the Court to condone delay after the expiry of the prescribed limitation period**.** Therefore, the phrase "remaining provisions" in clause (b) of section 29(2) does not include section 5 as a provision applicable to special laws. In this context, our Apex Court has settled this issue in Ishaque vs. Bangladesh, reported in 43 DLR (AD) 23**,** where the Court considered the applicability of section 5 of the Limitation Act in light of section 29(2). In that case, it was held that where a special law prescribes a specific period of limitation, the court cannot condone delay by resorting to the provisions of section 5 unless the special law itself permits such application. The relevant portion of the judgment is quoted below:

> "As the law of limitation stands today, it is undisputed that a plain reading of sub-section 2 of section 29 of the Limitation Act, 1908, clearly shows that section 5 has no application in the present case. The High Court Division acted without jurisdiction in condoning the delay in these cases."

In view of section 29(2)(b) of the Limitation Act, 1908, and in the absence of any provision in the special law making section 5 applicable, it is evident that the power to condone delay under section 5 is excluded, and it does not empower a Court to condone the delay under section 5 of the Limitation Act.

Further, it was argued by the Respondent that the present Suit/Execution Case is hopelessly barred by limitation in view of the special limitation prescribed under Article 182 of the First Schedule of the Limitation Act, 1908. It was claimed that the Arbitration Act, 2001, is a special law and, therefore, its provisions prevail over general procedural laws such as the Code of Civil Procedure, 1908. Section 45 of the Arbitration Act provides that an arbitral award shall be enforced in the

same manner as if it were a decree of the Court. Article 182 of the First Schedule of the Limitation Act, 1908, specifically prescribes the limitation period for the execution of a decree of a civil court. Under the said provision, an application for execution must be filed within three years from the date of the decree or award. In the present case, the foreign arbitral award was passed on 06.02.2012. Therefore, the award-holder was legally required to file the application for recognition and execution within three years, i.e., on or before 05.02.2015. However, the Decree-Holder, Jess Smith & Sons Cotton LLC, failed to initiate the execution proceedings within the prescribed statutory period. Instead, the Execution Case was filed on 02.10.2023, nearly nine (9) years after the expiry of the limitation period. In the above context, the present Execution Case is clearly and hopelessly barred by limitation, having been filed far beyond the statutory period of three years from the date of the award. In this regard, a decision was passed in a case of Terab Ali vs. Syed Ullah reported in 75 DLR (AD) 233, wherein it was held that the very first execution case must be filed within three years from the date of the decree as stipulated under Article 182 of the Limitation Act.

In the instant case, it is evident from the record that the execution application was filed on 02.10.2023, whereas the arbitral award was passed on 06.02.2012. Consequently, the instant application for condonation of delay suffers from an inordinate and unexplained delay of about nine years, rendering the execution proceedings hopelessly barred by limitation. In view of the above facts and settled principles of law, the instant application for condonation of delay filed by the Plaintiff/Decree-Holder is devoid of merit and liable to be rejected.

In the context, he brings a case of Devendra Chandra Dey Nath vs. Bharat Chandra Singha, reported in 19 DLR 514, it was held that the primary objective of the Limitation Act is to effectively “guillotine” cases instituted which are beyond the prescribed period of limitation. In view of

this settled principle, the instant appeal seeking condonation of delay is liable to be rejected.

In a case of ADC (Revenue), Pabna vs. Md. Abdul Halim Mia (48 DLR (AD) 141), it was held that while Section 48 of the Code of Civil Procedure provides a maximum period of 12 years for execution of a decree, Article 182 of the Limitation Act prescribes a period of 3 years from the date of the decree for filing an execution application. Failure to comply with this statutory requirement renders the decree barred by limitation and, consequently, non-executable.

In the case of Md. Faruque Thakur vs. Habibur Rahman (5 ALR (2015) (HCD) 343), the Court reiterated that the effect of Article 182 of the Limitation Act is to mandate that the first application for execution of a decree must be filed within 3 years from the date of the decree. In default thereof, the decree becomes incapable of execution, effectively rendering it dead in the eye of the law.

Mr. Muhammad Mustafizur Rahman Khan, learned Senior Advocate appearing on behalf of the Respondent, claims that the Appellant failed to provide a cogent and satisfactory explanation for condonation. According to him, the sole consideration for the Court has to be whether the Appellant has been able to establish a case of “sufficient cause” as required under section 5 of the Limitation Act. In the present case, the Appellant has miserably failed to do so. Though the Appellant contended that the delay occurred due to their bona fide reliance on the wrong advice given by their previous lawyer. However, the Appellant has failed to produce any documentary evidence in support of such assertion. In the absence of any corroborative documentary materials, such bare statements cannot be accepted in the eyes of the law as sufficient to establish that the inordinate delay of 3155 days was unintentional and bonafide. It is well settled that erroneous advice given by a pleader regarding the period of limitation for filing an appeal or application, particularly when such advice is given in ignorance of the

law, does not constitute “sufficient cause” within the meaning of section 5 of the Limitation Act. In the above context, Respondent reliance on a decision of the Nazir Ahmed vs. Province of East Bengal, reported in 5 DLR 150 (1953), wherein it was held that under the Limitation Act, “nothing shall be deemed to be done in good faith which is not done with due care and attention,” and that a pleader who gives wrong advice without referring to the law on a matter of which he is ignorant cannot be said to have acted with due care and attention. On that count, it has been claimed that the instant execution case is not maintainable, being hopelessly barred by limitation. The impugned execution case has been filed nearly nine years after the passing of the Arbitral Award, resulting in an inordinate delay for which no sufficient cause has been shown. Therefore, condoning such extraordinary delay without sufficient cause would undermine the very object and purpose of the law of limitation. Therefore, the Court below rightly rejected the Appellant’s application for condonation of delay.

Indeed, he lastly submits that Article 182 of the Limitation Act, 1908 prescribes a period of three years for the execution of a decree from the date of the decree, whereas Section 48 of the Code of Civil Procedure only provides the maximum outer limit of twelve years for execution. In the present case, the Execution Case has been instituted well beyond the statutory period of three years from the date of the award in question and is therefore hopelessly barred by limitation.

The Respondent has relied upon several authoritative decisions passed by our Apex Court supporting this position. The law declared by the Appellate Division, being the highest Court of the land, is binding upon all subordinate Courts by virtue of Article 111 of the Constitution. Accordingly, the principles laid down in those decisions must be followed in determining the limitation applicable to the present execution proceedings.

It appears that the Petitioner has relied on a series of decisions of the Indian Court; according to him, provisions of section 5 of the Limitation Act, 1908, are applicable to condone any delay in filing applications under section 45 of the Arbitration Act, 2001 for the enforcement of a foreign arbitral award. However, the Respondent contended that such a contention of the Petitioner is misconceived and disregards the textual difference between the relevant provisions of law of India and Bangladesh.

By way of his submission, he explains why the provisions of section 5 of the Indian Limitation Act, 1963, and the decision do not apply to the provisions of section 5 of the Limitation Act, 1908.

According to him, from the plain reading of Section 5 of the Indian Limitation Act, 1963, it appears that the Indian provision has a wide ambit, as it applies to *any appeal or application*, save and except applications under Order XXI of the CPC. Under the Indian arbitration regime, an arbitral award is enforceable, inter alia, under Sections 47 and 49 of the Arbitration Law. Consequently, an application for enforcement of an arbitral award falls within the scope of “any application,” and thus Section 5 of the Limitation Act, 1963 is applicable thereto.

In contrast, Section 5 of the Limitation Act, 1908 (as applicable in Bangladesh) provides: “Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. However, an application for the enforcement of a foreign arbitral award does not fall within any of the first four categories mentioned in the section above. Therefore, for Section 5 of the Limitation Act, 1908 to apply, there must be a specific statutory

provision extending its applicability to an application under Section 45 of the Arbitration Act, 2001. Admittedly, no such provision exists. In view of the foregoing, it is evident that the legal framework in India and Bangladesh on this point is materially different. Accordingly, the authorities relied upon by the Appellant based on Indian law are inapplicable and of no persuasive value in the present context.

Before concluding, learned counsel submits that the Court does not become *functus officio* in respect of a provisional order relating to condonation of delay and alleged order, and does not finally determine the rights of the parties. An order condoning delay and admitting a case is generally procedural and does not attain finality in the strict sense. Therefore, the Court retains inherent jurisdiction to revisit such an order in the interest of justice. He argues that the order has passed based on misstatement of important facts, the Court has the power to recall or review it. This power comes from the Court's inherent authority to prevent misuse of its process and to ensure justice. Therefore, the Court may reopen the issue of delay condonation; in this case, the earlier order was passed without proper hearing, or on incomplete or incorrect facts. In such cases, the impugned order is a valid exercise of the Court's power.

We have considered the exhaustive submission placed by the learned counsels for the contending parties, perused the memorandum of appeal, the impugned judgment and order, the arbitral award, materials on record, and the cited decisions referred to.

From the above, this Court finds substance and force in the submissions made by the Respondent, and this Court is inclined to take the decision based on the following reasons. In view of the above, it appears that under Article 182 of the Limitation Act, 1908, the application for execution of a foreign arbitral award deemed to be a decree under Section 45 of the Arbitration Act, 2001, which must be filed within three years from the date of the award. The award was passed on 06.02.2012,

whereas the execution case was instituted on 02.10.2023, rendering it hopelessly barred by limitation by about nine years. Secondly, Section 5 of the Limitation Act does not apply to execution proceedings unless its applicability is expressly provided by statute. Neither Section 45 of the Arbitration Act, 2001, nor any other relevant enactment makes Section 5 applicable to the execution of a foreign arbitral award. Consequently, in view of Section 29(2) of the Limitation Act, the jurisdiction of the Court to condone delay in such execution proceedings stands excluded. Lastly, there was a lack of Sufficient Cause, even if Section 5 was applicable; the Appellant's delay of 3,155 days was not supported by a "sufficient cause". Even otherwise, the Appellant has failed to disclose any sufficient or plausible cause for the inordinate delay of 3,155 days. It is well settled that mere reliance on erroneous legal advice does not constitute good faith, nor does it furnish a legally acceptable ground for condonation of such an extraordinary delay. Legal precedent establishes that wrong advice from a lawyer regarding the limitation period does not constitute "good faith" or a valid excuse for such an inordinate delay.

Regard being had to the above materials on record and submissions advanced as observed herein above; we do not find any illegality, irregularity, misreading of evidence or perversity in the impugned judgment which warrants no interference is called for by this Court.

Resultantly, the appeal is dismissed, however, without any order as to the cost. Consequently, the order passed by the learned District Judge, Dhaka rejecting the application for condonation of delay is hereby affirmed.

Let a copy of the judgment and order, along with the lower Court records, be sent to the Court concerned forthwith.

Jesmin Ara Begum, J:

I agree.