

(2023) 5 ILRA 1657
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.03.2023

BEFORE

**THE HON'BLE DR. KAUSHAL JAYENDRA
 THAKER, J.**

First Appeal From Order Defective No. 945 of
 2004

Sujan Singh Bundela & Anr. ...Appellants
Versus
Kripal Singh Yadav & Ors. ...Respondents

Counsel for the Appellants:

Sri V.C. Srivastava

Counsel for the Respondents:

Sri Sharad Kumar Purwar, Sri Satya
 Prakash Singh

Civil Law- The Limitation Act,1963-Section 5- There is huge delay of 2 years and 93 days-The matter has remained pending before this Court for 19 years without steps being taken-the kind of explanation rendered does not satisfy the observations of Apex Court that if delay has occurred for reasons which does not smack of mala fide, the Court should be reluctant to refuse condonation-On the contrary a complete careless and reckless long delay on the part of applicant which has remain virtually unexplained at all-No reason to exercise judicial discretion so as to justify condonation of delay in the present case. (Para 13) (E-15)

List of Cases cited:

1. Collector, Land Acquisition Vs Katiji, 1987(2) SCC 107
2. P.K. Ramachandran Vs St.of Kerala, AIR 1998 SC 2276
3. Shakuntala Devi Jain Vs Kuntal Kumari, AIR 1969 SC 575

4. Brij Indar Singh Vs Kanshi Ram ILR (1918) 45 Cal 94

5. St.of Nagaland Vs Lipok AO & ors., AIR 2005 SC 2191

6. Vedabai @ Vijayanatabai Baburao Vs Shantaram Baburao Patil & ors., JT 2001(5) SC 608

7. Pundlik Jalam Patil (dead) by LRS. Vs Executive Engineer, Jalgaon Medium Project & anr.(2008) 17 SCC 448

8. Maniben Devraj Shah Vs Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157

(Delivered by Hon'ble Dr. Kaushal
 Jayendra Thaker, J.)

1. This is an application seeking condonation of delay in filing the appeal which was filed in the year 2004.

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2. There is huge delay of 2 years and 93 days. The matter has remained pending before this Court for 19 years without steps being taken. Today also, none is present for the appellants.

3. Reasons for the delay as explained in the affidavit attached to this application reads as under :

"2. That the impugned judgment was passed on 8.11.2001 and decree was passed on 24.11.2001, but the Certified Copy of the Order was applied on 17.3.2004 and received on the same date, and Certified Copy of the Decree was also applied on 17.3.2004 and received on the same day.

3. That the appellants were not a party in the case. Pooran Singh Bundela was a party and proceedings was in the in the knowledge of the appellants.

4. *That when the Collection Officials were directed to recover the amount from the appellants, then the appellants came to know about the proceedings.*

5. *That after obtaining the Certified Copy of the Judgment and Decree, the appellants fell ill and they could not direct the deponent to contact the counsel for filing of the aforesaid case before this Hon'ble Court. The date of knowledge of the proceedings of the appellants is 17.3.2004, when they obtained the copy of the judgment and decree of the Courts below"*

3. The above reasons will have to be looked into the with the principle enunciated by the Courts from time to time for condonation of delay. The expression "sufficient cause" in Section 5 of Act, 1963 has been held to receive a liberal construction so as to advance substantial justice and generally a delay in preferring appeal may be condoned in interest of justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to parties, seeking condonation of delay. **In Collector, Land Acquisition Vs. Katiji, 1987(2) SCC 107**, the Court said, that, when substantial justice and technical considerations are taken against each other, cause of substantial justice deserves to be preferred, for, the other side cannot claim to have vested right in injustice being done because of a non deliberate delay. The Court further said that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. In **P.K. Ramachandran Vs. State of Kerala, AIR 1998 SC 2276** the Court said:

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds."

5. The Rules of limitation are not meant to destroy rights of parties. They virtually take away the remedy. They are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The statute relating to limitation determines a life span for such legal remedy for redress of the legal injury, one has suffered. Time is precious and the wasted time would never revisit. During efflux of time, newer causes would come up, necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The statute providing limitation is founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). It is for this reason that when an action becomes barred by time, the Court should be slow to ignore delay for the reason that once limitation expires, other party matures his rights on the subject with attainment of finality. Though it cannot be doubted that refusal to condone delay would result in foreclosing the person who initiate suit from putting forth his cause but simultaneously the party on the other hand is also entitled to sit and feel carefree after a particular length of time, getting relieved from persistent and continued litigation.

6. There is no presumption that delay in approaching the court is always deliberate. No person gains from deliberate delaying a matter by not resorting to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him.

7. We need not to burden this judgment with a catena of decisions explaining and laying down as to what should be the approach of Court on construing "sufficient cause" under Section 5 of Act, 1963 and it would be suffice to refer a very few of them besides those already referred.

8. In **Shakuntala Devi Jain Vs. Kuntal Kumari**, AIR 1969 SC 575 a three Judge Bench of the Court said, that, unless want of bona fide of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

9. The Privy Council in **Brij Indar Singh Vs. Kanshi Ram** ILR (1918) 45 Cal 94 observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. This principle still holds good inasmuch as the aforesaid decision of Privy Council as repeatedly been referred to, and, recently in **State of Nagaland Vs. Lipok AO and others**, AIR 2005 SC 2191.

10. In **Vedabai @ Vaijyanatabai Baburao Vs. Shantaram Baburao Patil and others**, JT 2001(5) SC 608 the Court said that under Section 5 of Act, 1963 it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic guiding factor is advancement of substantial justice.

11. In **Pundlik Jalam Patil (dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr.** (2008) 17 SCC 448, in para 17 of the judgment, the Court said :

"...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

12. In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, 2012 (5) SCC 157**, in para 18 of the judgment, the Court said as under:

"What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

13. In our view, the kind of explanation rendered herein does not satisfy the observations of Apex Court that if delay has occurred for reasons which

does not smack of mala fide, the Court should be reluctant to refuse condonation. On the contrary, we find that here is a case which shows a complete careless and reckless long delay on the part of applicant which has remain virtually unexplained at all. Therefore, we do not find any reason to exercise our judicial discretion exercising judiciously so as to justify condonation of delay in the present case.

14. In view of the above, this application requires to be rejected hence, the same is rejected.

Order on Appeal

Since application seeking condonation of delay in filing this appeal has been dismissed vide order of date, the appeal being barred by limitation, is accordingly dismissed.

(2023) 5 ILRA 1660
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.05.2023

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ-C No. 1000408 of 2001

Mohd. Naim	Versus	...Petitioner
Additional Commissioner, Gonda & Ors.		...Respondents

Counsel for the Petitioner:

Shyam Krishna Srivastava, Najeem Zafar, Rafar Farooqui, T.H. Khan, Z. Jilani

Counsel for the Respondents:

C.S.C., D.C. Mukherjee, Deepak Seth, Iqbal Ahmad, Jitendra Saxena, Kumar Ayush, Mohd. Aslam Khan, Mohd. Kumail Haider,