

Akbar @ Punna Khan vs State Of U.P. And Another on 1 April, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44685

Court No. - 71

Case :- APPLICATION U/S 482 No. - 30541 of 2024

Applicant :- Akbar @ Punna Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Mithilesh Kumar Shukla, Sudhir Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for applicant and the learned A.G.A. for the State.

2. This application u/s 482 Cr.P.C. has been preferred against the order dated 26.06.2024 passed by Learned Additional Principal Judge, Family Court No. 2, Agra in Misc. Civil Case No. 380 of 2022 (Akbar @ Punna Khan Vs. Smt. Tarana Begum), under Section 126(2) Cr.P.C., Police Station Etmaddaula, District Agra, whereby the application filed by applicant under Section 5 Limitation Act for condonation of delay has been rejected.

3. It has been submitted by learned counsel for the applicant that applicant is husband of opposite party no. 2 and that the opposite party no. 2 has filed a case under Section 125 Cr.P.C. against applicant. No notice or summon was served upon the applicant in the said case and it was decided by ex-parte judgment dated 30.09.2021. It was submitted that applicant came to know about the said ex-parte judgment on 27.10.2021, when recovery proceedings were initiated. After that there has been COVID-19 pandemic period and thus, applicant could not file the application to recall the said ex-parte judgment. It was submitted that on 15.03.2022 the applicant has filed an application under Section 126(2) Cr.P.C. to recall the said ex-parte judgment dated 30.09.2021, along with application under Section 5 Limitation Act. The application under Section 5 Limitation Act has been rejected by the Family Court by impugned order dated 26.06.2024 in an arbitrary manner. It was submitted that there had been no deliberate delay or laches on the part of the applicant and thus, the impugned order is liable to be set aside.

4. Learned A.G.A. has submitted that there is no illegality or perversity in the impugned order.

5. I have considered rival submissions and perused the record.

6. In case of *Maniben Devraj Shah Vs Municipal Corpn of Brihan Mumbai* (2012) 5 SCC 157, Hon'ble Apex Court observed that law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (1987) 2 SCC 107, the Court made a significant departure from the earlier judgments and observed:

"The legislature has conferred the power to condone delay by enacting Section 5 the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7. In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123, the Court made following observations:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

8. It was observed that rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Unending period for launching

the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.

9. Thus, 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, 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.

10. In the instant matter, perusal on record shows that the ex-parte judgment was passed on 30.09.2021, granting maintenance in favour of opposite party no. 2. It was stated on behalf of applicant that no notice or summoning was served upon the applicant in those proceedings and that applicant came to know about said ex-parte judgment dated 30.09.2021 on 27.10.2021. After that there has been COVID-19 pandemic period and he has filed an application under Section 5 of Limitation Act, along with application under Section 126(2) Cr.P.C. on 15.03.2022. As referred above, in such matters a liberal approach has to be adopted so that matter may be decided on merits. There is nothing to show that in proceedings under Section 125 Cr.P.C. any notice was personally served upon the applicant. In view of attending facts there is nothing to indicate that there has been any gross negligence or he adopted any dilatory tactic.

11. Considering all the facts of the matter, it appears that end of justice would met if the application filed by applicant under Section 5 Limitation Act is allowed subject to some substantial costs so that opposite party no. 2 may be compensated to some extent.

12. In view of these facts, it would be just and proper to allow the application of the applicant under Section 5 Limitation Act subject to costs of Rs. 7,000/- (Seven thousand). Accordingly, the impugned order is set aside and application under Section 5 Limitation Act is allowed subject to costs of Rs. 7,000/-. The applicant shall

pay / deposit the said costs within a period of three weeks from today. The costs shall be payable to the opposite party No. 2 / wife or may be deposited before the Court concerned. On deposition of costs, the impugned order would stand set aside and application under Section 5 Limitation Act would stand allowed.

13. The application under Section 482 Cr.P.C. is disposed of in above terms.

Order Date :- 1.4.2025 SK Srivastava