

Triveni Prasad And 3 Others vs Deputy Director Of Consolidation And 4 ... on 30 April, 2025

Author: Saurabh Lavania

Bench: Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:24958

Court No. - 7

Case :- WRIT - B No. - 222 of 2025

Petitioner :- Triveni Prasad And 3 Others

Respondent :- Deputy Director Of Consolidation And 4 Others

Counsel for Petitioner :- Hari Shanker Tewari,Ajay Tiwari

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Saurabh Lavania,J.

1. Heard.

2. In view of order proposed to be passed, issuance of notice to the private-respondent is hereby dispensed with.

3. By means of the present petition the petitioner has assailed the order(s) dated 14.02.2025, 04.11.2024 and 18.08.1975 passed by opposite party no. 1, 2 and 3 respectively, as appears from the following main relief(s) sought in the present petition:-

"i) issue a writ, order or direction in the nature of Certiorari thereby quashing of the order dated 14.2.2025 passed by the Deputy Director of Consolidation, Sultanpur, order dated 4.11.2024 passed by the Settlement Officer, Consolidation, Sultanpur and order dated 18.8.1975 passed by the Consolidation Officer, Sultanpur (Quoted on C.H. 45) as contained in Annexure No. 1, 2 & 5 respectively to this writ petition.

(ii) issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties not to create any hindrance in peaceful possession of the petitioners over the land in question."

4. Brief facts of the case are as under:-

(i) An order was passed on 18.08.1975 by Consolidation Officer/respondent no. 3 (in short "CO") in Case No. 2708 under Section 20 of U.P. Consolidation and Holdings Act 1953 (in short "Act of 1953").

(ii) The order dated 18.08.1975 was passed in relation to Gata No. 2829 situated at Hamlet- Ugharpur, Post - Bandhua Kala, Pargana- Meeranpur, Tehsil - Sadar, District - Sultanpur

(iii) In terms of order dated 18.08.1975 the entries were made in Form CH-45 (Annexure No. 5 to the petition) on 26.08.1975.

(iv) The order dated 18.08.1975, as per the case set up by the petitioners, is a forged order.

(v) At this stage, it would be apt to indicate that to establish that the order dated 18.08.1975, according to which the entries were made in Form CH-45 by CO on 26.08.1975, is a forged document, no document/evidence which is/was required has not been placed on record except a copy of the report of the record-keeper annexed as Annexure No. 9 to the present petition.

(vi) The appeal challenging the order dated 18.08.1975, thereafter, was filed after delay of about 47 years on 10.02.2022 along with an application seeking condonation of delay, which is the issue involved in the present petition.

(vii) This Court has to consider as to whether proper explanation was given seeking condonation of delay of about 47 years or not?

(viii) Accordingly, the contents of the application seeking condonation of delay under Section 5 of Limitation Act, 1963 are extracted herein-under :-

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30 (2) of the Limitation Act, 1963, read with Section 5 of the Limitation Act, 1963, shall apply to the present petition.

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(ix) From Para 2 of the application seeking condonation of delay quoted above, it appears that on account of filing of case under Section 30(2) of U.P. Revenue Code, 2006 (in short "Code of 2006") the petitioner came to know about the order dated 18.08.1975.

(x) It is also evident from the aforesaid paras that the same are vague so far as it relates to knowledge of order dated 18.08.1975 is concerned as in the paras neither the date of knowledge has been mentioned nor it has been mentioned as to whether the notice, if any, was served upon the petitioners with regard to case instituted under Section 30(2) of the Code of 2006 registered as Case No. 00111/2021 (Computerized Case No. D202104680000111, Gram Panchayat Vs. Triveni Prasad), which was decided on 25.10.2023. The order dated 25.10.2023 is extracted herein-under:

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(xi) A perusal of the order dated 25.10.2023 passed by Additional District Magistrate, Sultanpur in exercise of power under Section 30(2) of Code of 2006 indicates that after putting appearance making objections with regard to entries made from CH-41 and CH-45. the petitioner did not appear in the said proceedings.

(xii) The order dated 25.10.2023 further indicates that based upon the entry in the Form CH-45, which is based upon the order dated 18.08.1975, the final order has not been passed in the case.

(xiii) After the order dated 25.10.2023 passed in exercise of power Section 30(2) of Code of 2006, the Settlement Officer Consolidation, Sultanpur (in short 'S.O.C.') dismissed the appeal of the petitioners registered as Appeal No. 0105/2022 (Computerized Case No. 2022540468000105, Triveni Prasad Vs. Siyaram), instituted under Section 11(1) of the Act of 1953, vide order dated 04.11.2024. Relevant portion of order dated 04.11.2024 of the order passed by S.O.C. is extracted herein-under :-

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(xiv) From the order date 04.11.2024, quoted above, it is apparent that before the appellate authority i.e. S.O.C. no document/evidence to establish that order dated 18.08.1975 is a forged document was filed.

(xv) Being aggrieved, the petitioners approached Deputy Director of Consolidation, Sultanpur (in short 'DDC') by means of Revision No. 2666 of 2024, instituted under Section 48(1) of the Act of 1953. The DDC dismissed the revision vide order dated 14.02.2025. Relevant portion of order dated 14.02.2025, on reproduction reads as under:-

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5. In the aforesaid background of the case, the present petition has been filed.

6. Considered the aforesaid as also the submissions advanced by learned Counsel for the petitioner, who submitted that proper explanation was given for condoning the delay in the affidavit filed in support of application seeking condonation of delay, and the submission advanced by learned State Counsel and perused the records.

7. This Court is of the view that at this stage, the issue of limitation has to be considered and as such this Court is only considering the facts which are relevant for answering the question as to "whether explanation given in the application for condonation of delay in filing the appeal is just and proper".

8. The aforesaid is in view of the law settled. As per settled law for the purposes of condonation of delay, the concerned party has to explain sufficient cause for not approaching the court/authority concerned within time prescribed under the statutory provision.

9. The law on the issue of dealing with the applications for condonation of delay is well settled. This Court as also Hon'ble Apex Court in various judgments have held that an opportunity of hearing should be given and the hearing should not be shut down and in the said judgments, it is also settled that liberal, pragmatic, justice oriented and non pedantic approach should be taken by the Courts concerned while dealing with the applications for condonation of delay so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned. The Courts concerned while dealing with such applications should also consider the fact that whether the delay has sufficiently been explained or not. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words "sufficient cause" under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone the delay. It is also settled principle of law that the discretion if exercised by the Courts concerned then the Appellate Courts should not interfere in the discretion exercised by the Courts concerned, if the discretion so exercised has been exercised judicially and not arbitrarily.

10. The Hon'ble Apex Court in the case of Ramji Dass and others v. Mohan Singh, 1978 ARC 496 has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex-parte decree after eight years and the District Court as well as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Apex Court observed as under:

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

11. The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in the case of N. Balakrishnan Vs. M. Krishnamurthy; (1998) 7 SCC 123, wherein Hon'ble Apex Court observed as under:-

"9. 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.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. 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. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. 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 is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366 ."

12. In the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nefar Academy and others* reported in (2013) 12 SCC 649, the issue before the Apex Court was that whether the High Court rightly condoned the delay of 2449 days in challenging the interim order dated 25.02.2004, which was duly communicated to the authorities and even for compliance of the same, the District Inspector of Schools, Howrah on 24.01.2006, directed the school authorities to comply with the directions issued vide order dated 25.02.2004. The Apex Court after considering the earlier judgments allowed the appeal and set aside the order of the High Court, condoning the delay. In the case of *Esha Bhattacharjee (supra)*, the Apex Court in para 21 of the judgment culled out the principles on the issue of condoning the delay, which are as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

13. In the case of Brijesh Kumar and others v. State of Haryana and others reported in (2014) 11 SCC 351, the Hon'ble Apex Court observed as under:-

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim [(1939-40) 67 IA 416 : (1941) 53 LW 212 : AIR 1941 PC 6] , relied upon the writings of Mr Mitra in Tagore Law Lectures, 1932 wherein it has been said that:

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556 : AIR 1998 SC 2276] , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

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

9. While considering a similar issue, this Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy [(2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450] laid down various principles inter alia: (SCC pp. 658-59, paras 21-22) *** "21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

*** 21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

*** 21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

*** 22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

14. On the issue of condonation of delay, the Hon'ble Apex Court in the case of Bhivchandra Shankar More v. Balu Gangaram More reported in (2019) 6 SCC 387, observed as under:-

"15. It is a fairly well-settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under:

"6. 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 serves 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 courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy [N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123], this Court held as under:-

"11. 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. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons

to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. 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 is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time....."

15. The Hon'ble Apex Court in the case of Ajay Dabra Versus Pyare Lal and others reported in 2023 SCC OnLine SC 92, on the issue of dealing with an application for condonation of delay, observed as under:-

"12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela v. Financial Commissioner, Revenue, Punjab, Chandigarh (1977)4 SCC 69 has held:

"21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

13. This Court in the case of Basawaraj v. Special Land Acquisition Officer (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the

condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

16. The Hon'ble Supreme Court in the case of Pathupati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA) [2024] 4 S.C.R. 241 has held as under:-

"16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.², this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases liberal approach, justice-oriented approach and cause for the advancement of 'substantial justice cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation. Act.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party."

17. Again, the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Ramkumar Choudhary reported in 2024 INSC 932 has held as under:-

"5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In Majji Sannemma v. Reddy Sridevi, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in Ajay Dabra v. Pyare Ram wherein, it was held as follows:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer ((2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir (2024) SCC OnLine SC 489 wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause

prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

18. In this case the delay is of about 47 years. This Court considered the explanation given in the application dated 10.02.2022 seeking condonation of delay, quoted in paragraph 4(viii) of this judgment, in the light of the law enunciated on the issue of condonation of delay.

19. Upon due consideration of aforesaid, this Court is of the view that the explanation given by the petitioner for the purposes of condoning the delay of 47 years in filing the appeal, is vague and is not sufficient, as in the application seeking condonation of delay dated 10.02.2022, neither date of knowledge of order dated 18.08.1975 has been indicated nor date of appearance in the case under Section 30 of Code of 2006 has been indicated nor relevant document i.e. copy of summon has been filed before this Court to establish the facts indicated in para 2 and 3 of the application.

20. In addition to above, to establish the facts indicated in para 5 of this petition, quoted below, the petitioners have not filed the relevant documents viz. copy of (i) Form CH-2A, (ii) Form CH-23, (iii) khatauni, etc. "That according to the above said order plot No. 2724 area 3 Biswa 10 Dhur which was a chak out land has been included in the chak of the petitioner i.e. Chak No. 62 and plot No. 2283A area 2 Biswa 1 Dhur has been marked as Chakroad which is affecting the chak of the petitioner."

21. For the reasons aforesaid, the present petition is liable to be dismissed. It is dismissed accordingly. Cost made easy.

22. It is made clear that this order would not affect the right of the petitioners to contest the Case No. 00111/2021, under Section 30 of Code of 2006, proceedings of which have been closed vide order dated 25.10.2023. It is for the reason that this Court has not considered the validity of the order dated 18.08.1975 for which based on mere report of record-keeper it has been alleged that the order dated 18.08.1975 is a forged document and, in facts of the case, to the view of this Court same is not sufficient to hold that the order dated 18.08.1975 is a forged document and this issue could be considered while deciding the Case No. 00111/2021 (Supra) as it is settled principle of law that even in collateral proceedings such plea can be taken and decided.

Order Date :- 30.04.2025 Mohit Singh/-

