

# Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La) on 8 April, 2024

**Author: Pankaj Mithal**

**Bench: Pankaj Mithal, Bela M. Trivedi**

2024 INSC 286

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018

PATHAPATI SUBBA REDDY (DIED)  
BY L.Rs. & ORS.

...PETITIONER(S)

VERSUS

THE SPECIAL DEPUTY COLLECTOR (LA)

...RESPONDENT(S)

JUDGMENT

PANKAJ MITHAL, J.

1. Some land in village Gandluru, District Guntur, Andhra Pradesh was acquired some time in 1989 for Telugu Ganga Project. Not satisfied by the compensation offered under the award, the claimants (16 in number) preferred a reference under Section 18 of Land Acquisition Act (hereinafter for short the 'Act') i.e., L.A.O.P. No. 38 of 1990 titled Juvvala Gunta China Chinnaiah (dead) and Ors. vs. Special Deputy Collector (Land Acquisition) Telugu Ganga Project, Podalakur

1|22 at Nellore. Out of the 16 claimants in the above reference, claimants No. 1, 3 and 11 died during the pendency of the reference before the Court of Addl. Senior Civil Judge, Gudur. No steps were taken to substitute the heirs and legal representatives of the above deceased persons. The said reference was dismissed on merits along with some other references vide common judgment and order dated 24.09.1999 upholding the award of the collector.

2. After the lapse of more than 5/6 years, an appeal was proposed to be filed in the High Court Under Section 54 of the Act challenging the dismissal of the reference. The said appeal was proposed to be filed only by some of the heirs and legal representatives of the deceased claimant No. 11 in the reference i.e., Pathapati Subba Reddy. No other claimant or their legal heirs from amongst the other 15 who were parties in the reference joined the heirs and legal representatives of claimant No. 11 in filing the appeal. They did not even prefer any separate or independent appeal of their own. In other

words, out of the 16 claimants, 15 of them impliedly accepted the judgment and order of the reference court and it is only

2|22 the heirs and legal representatives of claimant No. 11, who feel aggrieved and have proposed to file the appeal.

3. The above appeal, as stated earlier, was preferred with the delay of 5659 days. Accordingly, an application supported by an affidavit of the surviving daughter of the deceased claimant No. 11 was filed for condoning the delay in filing the proposed appeal. It was averred in the said application that the proposed appellants are the heirs and legal representatives of the deceased claimant No. 11 i.e. Pathapati Subba Reddy, who died on 15.05.1995 during the pendency of the reference but they were not brought on record before the decision of the reference. The said deceased claimant No.11 was survived by his two daughters. The elder one died and that the proposed appellants are the surviving second daughter and her descendants. Since she was living in her matrimonial house, she had no knowledge of the above reference. It was only on 28.05.2015 when one of the grandsons of the said daughter of the deceased claimant visited the office of the L.A.O. for the purpose of obtaining submersion certificate to secure a job that he came to know

3|22 that there was a reference which was dismissed on 24.09.1999, whereupon the proposed appeal was immediately filed along with an application to condone the delay in its filing.

4. There is no dispute to the fact that in L.A.O.P. No. 38 of 1990 there were 16 claimants in all. During the pendency of the aforesaid reference, claimants No. 1, 3 and 11 were dead but the heirs and legal representatives of none of them were brought on record. None of the other claimants or their heirs and legal representatives made any effort to challenge the order of the dismissal of the reference except the proposed appellants which indicates that the others have accepted the same. It is only one of the surviving daughters of the deceased claimant No. 11 and her descendants who have sought to prefer the proposed appeal against the judgment and order dated 24.09.1999 with an inordinate delay of 5659 days. The High Court not being satisfied by the explanation furnished in preferring the proposed appeal beyond limitation, refused to condone the delay in filing the proposed

4|22 appeal and consequently dismissed it as barred by time by the order impugned dated 18.01.2017.

5. The present Special Leave Petition has been filed challenging the judgment and order dated 18.01.2017 of the High Court passed in L.A.A.S.M.P. No. 714 of 2016 in L.A.A.S. (SR) No. 6950 of 2015 whereby the High Court has dismissed the application of the petitioners herein for condoning the delay of 5659 days in filing the proposed appeal.

6. The moot question before us is whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a

5|22 dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

“3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”

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11. Though Section 3 of the Act mentions about suit, appeal and application but since in this case we are concerned with appeal, we would hereinafter be mentioning about the appeal only in context with the limitation, it being barred by time, if at all, and if the delay in its filing is liable to be condoned.

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the

7|22 period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In Bhag Mal alias Ram Bux

8|22 and Ors. vs. Munshi (Dead) by LR. and Ors.<sup>1</sup>, it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.

16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of (2007) 11 SCC 285

9|22 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.<sup>2</sup>, 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- (1987) 2 SCC 107 = AIR 1987 SC 1353 10 | 2 2 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<sup>3</sup> 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 A.I.R. 1962 SC 361 11 | 2 2 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.

19. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors.<sup>4</sup>, it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.

20. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.<sup>5</sup> wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by A.I.R. 1935 PC 85 2014 (4) SCALE 50 12 | 2 2 approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors.<sup>6</sup>, where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.

22. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.<sup>7</sup>, that the merits of the (2011) 4 SCC 363 AIR 2009 SC 1927 13 | 2 2 case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

23. In Basawaraj and Anr. vs. Special Land Acquisition Officer<sup>8</sup>, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its

rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal (2013) 14 SCC 81 14 | 2 2 approach and in implementing the statute as it stands.

Paragraph 12 reads as under:

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”

25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

“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

15 | 2 2 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.” (emphasis supplied)

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

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(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and 17 | 2 2 condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

27. It is in the light of the above legal position that now we have to test whether the inordinate delay in filing the proposed appeal ought to be condoned or not in this case.

28. The submission of learned counsel for the petitioners is that in somewhat similar situation, delay in filing appeal for the enhancement of compensation had been condoned by this Court. He placed reliance upon the case of Dhiraj Singh (Dead) through Legal Representatives & Ors. vs. State of Haryana & Ors.<sup>9</sup>. In this case, delay in filing appeal was condoned as in other appeals compensation awarded at the rate of Rs.200/- per sq. yd. was upheld and the proposed appellants were also held entitled to the same benefit of compensation at the rate of Rs.200/- per sq. yd. instead of Rs.101/- per sq. yd. as awarded but with the rider that they (2014) 14 SCC 127 18 | 2 2 will not be entitled for interest for the period of delay in approaching the High Court.

29. The other decision relied upon in this regard is the case of Imrat Lal & Ors. vs. Land Acquisition Collector & Ors.<sup>10</sup>. In this case also the matter was regarding determination of compensation for the acquired land and there was a delay of 1110 days in filing the appeal for enhancement of

compensation. Despite findings that no sufficient cause was shown in the application for condoning the delay, this Court condoned the delay in filing the appeal as a large number of similarly situate persons have been granted relief by this Court.

30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is in violation of (2014) 14 SCC 133 19 | 22 the legislative intent or the express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of Basawaraj (supra).

31. Learned counsel for the petitioners next submitted on the basis of additional documents that in connection with the land acquisition in some other Special Leave Petitions, delay was condoned taking a lenient view and the compensation was enhanced with the rider that the claimants shall not be entitled for statutory benefits for the period of delay in approaching this Court or the High Court. The said orders do not clearly spell out the facts and the reasons explaining the delay in filing the appeal(s) but the fact remains that the delay was condoned by taking too liberal an approach and putting conditions which have not been approved of by this Court itself. In the absence of the facts for getting the delay condoned in the referred cases, vis-à-vis, the facts of this 20 | 22 case, it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s).

32. Moreover, the High Court, in the facts of this case, has not found it fit to exercise its discretionary jurisdiction of condoning the delay. There is no occasion for us to interfere with the discretion so exercised by the High Court for the reasons recorded. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did. Thus, there is apparently no due diligence on their part in pursuing the matter. Accordingly, in our opinion, High Court is justified in refusing to condone the delay in filing the appeal.

33. In the above situation, we do not deem it proper and necessary to interfere with the decision of the High Court 21 | 22 refusing to condone the inordinate delay in filing the proposed appeal.

34. The Special Leave Petition, as such, lacks merit and is dismissed.

..... J.

(BELA M. TRIVEDI) ..... J.



(PANKAJ MITHAL) NEW DELHI;

APRIL 8, 2024.

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