

**Thirunagalingam
v.
Lingeswaran & Anr.**

(Civil Appeal No. 6843 of 2025)

13 May 2025

[B.V. Nagarathna and Satish Chandra Sharma,* JJ.]

Issue for Consideration

An appeal suit along with the application for condonation of delay of 1116 days was preferred. The High Court allowed the application for condonation of delay of 1116 days. Whether the delay is to be condoned or not, and if the delay is justifiable, then whether the case should be allowed to proceed on merits, or be dismissed on procedural grounds.

Headnotes[†]

Code of Civil Procedure, 1908 – Or. XLI, r.3A and s.151 – In the first round of litigation, respondents could not succeed in setting aside the *ex-parte* decree passed by the Trial Court in the suit, and hence they preferred the appeal suit along with the application for condonation of delay of 1116 days – The said application for condonation of delay of 1116 days was dismissed by the First Appellate Court – However, the High Court allowed the application for condonation of delay of 1116 days and directed the First Appellate Court to proceed with the appeal suit on merits – Correctness:

Held: In the present case, from the perusal of the record, it can be observed that in the first round of litigation, the respondents were duly served with the summons after institution of the aforesaid suit – In response, they entered an appearance and filed their written statement, thereby submitting themselves to the jurisdiction of the Trial Court – However, despite being present in the initial stage of proceedings, respondents choose not to further appear before the Trial Court continuously – Consequently, the Trial Court was constrained to proceed *ex-parte* against them – Further, the High Court has relied upon N. Mohan, while passing the impugned order, however, on comparison, the facts of the said case are different from the case at hand – Consequently, the

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impugned order passed by the High Court is perverse in nature and is not in conformity with the legal principles – Accordingly, the impugned order is set aside – Proceeding further on the issue of condonation of delay of 1116 days in filing the appeal suit, since the respondents assigned the very same reasons in I.A. No. 1 of 2022 in Unnumbered A.S. No. of 2022 as raised in I.A. Nos. 462 of 2018 and 119 of 2019 that had already been dismissed by this Court vide S.L.P. (C) Nos. 2054 & 2055 of 2022, the application for condonation of delay of 1116 days cannot be sustained – This Court in S.L.P. (C) Nos. 2054 & 2055 of 2022, after going through the evidence placed on record, rightly held that the delay has not been properly explained – An order of this Court, passed upon judicial consideration, attains finality unless set aside through appropriate appellate or review mechanisms – In the present appeal, the respondents seek to raise the very same reason to condone the delay as were previously canvassed, without placing any fresh or additional material to distinguish the current reason from the one already discussed and dismissed – This Court is of the considered view that such a repetition of grounds already scrutinized and held untenable amounts to an abuse of the process of law. [Paras 25, 26, 28, 29, 30]

Condonation of delay – Plea for – Duty of the Court:

Held: It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter – Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay. [Para 31]

Condonation of delay – Condoning delay not an act of generosity:

Held: Delay should not be condoned merely as an act of generosity – The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party – In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet. [Para 32]

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N. Mohan v. R. Madhu [2019] 14 SCR 156 : (2020) 20 SCC 302 – **distinguished.**

Bhanu Kumar Jain v. Archana Kumar [2004] Supp. 6 SCR 1104 : (2005) 1 SCC 787 – **referred to.**

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Delay; Condonation of delay; Duty of Court; Justice; Reasonable grounds of delay; Judicial mind; Abuse of process of law.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6843 of 2025

From the Judgment and Order dated 25.04.2023 of the High Court of Judicature at Madras at Madurai in CRPMD No. 1113 of 2023

Appearances for Parties

Advs. for the Appellant:

S. Nagamuthu, Sr. Adv., M.p. Parthiban, Ms. Priyaranjani Nagamuthu, Ankur Prakash, Mrs. Priyanka Singh, Bilal Mansoor, Shreyas Kaushal, S. Geyolin Selvam, Alagiri K.

Advs. for the Respondents:

A.Velan , Navpreet Kaur, Prince Singh, Nilay Rai.

Judgment / Order of the Supreme Court**Judgment**

Satish Chandra Sharma, J.

1. Leave granted.
2. The present appeal is arising out of order dated 25.04.2023 passed by the Madurai Bench of Madras High Court in C.R.P.(MD) No. 1113 of 2023 and CMP (MD) No. 5363 of 2023 (hereinafter “**Impugned Order**”).

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3. The aforesaid order was arising out of order dated 08.02.2023 passed by the Principal District and Sessions Judge, Ramanathapuram (hereinafter "**Trial Judge**"), by which the Trial Judge has dismissed I.A. No. 1 of 2022 in unnumbered A.S. No. _____ of 2022 on the file of the Court.
4. The facts of the case reveal that a sale agreement was executed on 17.08.2015 between the plaintiff (hereinafter "**Appellant**") and defendant (hereinafter "**Respondent No. 1**") for a consideration of Rs. 3 lakhs in respect of the suit property situated at Nainarkoil @ Naganathasamoothiram Village. The Respondent No. 1 in the present case failed to execute the sale deed pursuant to the sale agreement dated 17.08.2015 and in those circumstances, the Appellant preferred a civil suit before the Sub Court, Paramakudi, on 21.09.2015 i.e. O.S. No. 110/2015, praying for relief of specific performance of sale agreement dated 17.08.2015. The facts further reveal that during the pendency of the aforesaid suit, the Respondent No. 1 executed a sale deed in favour of defendant no. 2 (hereinafter "**Respondent No. 2**") on 26.11.2015. In the civil suit i.e. O.S. No. 110/2015, both the defendants filed their written statement; however, at a later stage, stopped appearing in the matter and in those circumstances, the defendants were proceeded against *ex-parte* on 07.02.2017. The trial court finally passed an *ex-parte* decree on 07.02.2017 and the Appellant thereafter preferred an Execution Petition i.e. E.P. No. 10/2017. On account of execution proceedings, the sale deed was also executed in favour of the Appellant.
5. The Respondent No. 1 and Respondent No. 2 preferred two separate applications under Order IX Rule 13 of the Code of Civil Procedure (hereinafter "**CPC**") i.e. I.A. No. 119/2015 and I.A. No. 462 of 2018 along with applications for condonation of delay of 712 and 467 days respectively, and the trial court allowed both the applications i.e. I.A. No. 462 of 2018 and I.A. No. 119/2018 vide order dated 19.08.2019, setting aside *ex-parte* decree order and condoned the delay.
6. The Appellant preferred a revision before the High Court by filing CRP(MD) No. 1688 and 1689 of 2019 and the same was allowed by the High Court vide order dated 09.11.2021. The Respondents being aggrieved by the order of the High Court, dated 09.11.2021 preferred Special Leave Petition (C) Nos. 2054-55 of 2022 and this Court dismissed the said Special Leave Petitions by an order dated

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25.02.2022 meaning thereby that the *ex-parte* judgment and decree came to be affirmed by this Court.

7. The Respondents, after the matter attained finality, on account of dismissal of Special Leave Petitions vide order dated 25.02.2022, initiated the second round of litigation by preferring an appeal against the *ex-parte* judgment and decree. The appeal was barred by limitation and, therefore, an application was also filed for condoning the delay of 1116 days in filing appeal under Order XLI Rule 3A read with Section 151 of the CPC before the First Appellate Court. The First Appellate Court by an order dated 08.02.2023 dismissed the I.A. No. 1 of 2022 in unnumbered A.S. No. _____ of 2022 which was for condonation of delay of 1116 days and being aggrieved by the order passed by the first Appellate Court, dated 08.02.2023, a revision was preferred before the High Court i.e. C.R.P.(MD) No. 1113 of 2023. The High Court, after hearing the parties has set aside the order dated 08.02.2023 vide Impugned Order dated 25.04.2023 upon a payment of costs of Rs. 1 lakh, meaning thereby a delay of 1116 days was condoned by the High Court. The operative paragraph of the order passed by the High Court reads as under:

“19. Considering the fact that the respondent has been put to inconvenience by the petitioners and since the respondent has deposited the balance sale consideration and also invested the balance amount together with the stamp duty, I am inclined to intervene in favour of the petitioners by directing the petitioners to pay a sum of Rs. 1 lakh to the respondent. This amount shall be paid directly to the respondent on or before 07.06.2023. Subject to such payment, the application filed by the petitioners in I.A. No. 1 of 2022 to condone the delay before the Principal District and Sessions Court, Ramanathapuram, shall stand allowed. The learned Principal District and Sessions Judge, Ramanathapuram, shall number the appeal and dispose it on merits as expeditiously as possible, preferably, within a period of nine months in accordance with law. The petitioners shall report compliance by filing a suitable memo before the learned Principal District and Sessions Judge, Ramanathapuram.”

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8. The appellant/plaintiff being aggrieved by the order dated 25.04.2023 passed by the High Court allowing the civil revision has preferred the present appeal.

SUBMISSIONS MADE BY THE APPELLANT/ PLAINTIFF

9. The learned counsel for the appellant submitted that no clear explanation is forthcoming for the delay that was caused in the first round of litigation while filing the application under Section 5 of the Limitation Act, 1963, to condone the delay under Order IX Rule 13 of the CPC. Furthermore, the High Court failed to appreciate that the delay caused in filing the appeal under Section 96(2) read with Order XLI Rule 1 of CPC alone can be excluded by applying the principle in Section 14 of the Limitation Act, 1963. The delay of 467 days and 712 days that was caused after the Respondents were set *ex-parte*, was found to be unsatisfactory as held by the High Court in earlier C.R.P (MD) Nos.1688 & 1689 of 2019, vide order dated 09.11.2021, which has been affirmed by this Hon'ble Court while dismissing the Special Leave Petitions of the respondents/defendants in SLP Nos. 2054 and 2055 of 2022. It was submitted that the Respondents cannot reagitate the very same question which has attained finality in the earlier proceedings.
10. Moreover, it has been argued that the High Court erred in applying the decision of the Hon'ble Supreme Court in ***N. Mohan v. R. Madhu (2020) 20 SCC 302*** in the facts of the present case. In that case, the Respondents were never served with the suit summons, but in the present case, the respondents/defendants were properly served with the suit summons, they appeared and filed a Vakalatnama, and also filed their written statement. Moreover, in ***N. Mohan's case (supra)***, the issue dealt with was the maintainability of the appeal filed under Section 96(2) of CPC against the *ex-parte* decree. The same is not disputed by the appellant/plaintiff herein, as an appeal under Section 96(2) of the CPC is maintainable. The question is whether the enormous delay of 1116 days can be condoned without any proper explanation.
11. That apart, it was submitted that the Court has not laid down any ratio to be followed in the above case relied upon. It was further submitted that the Court has taken note of the *bona fide* conduct of the parties (the defendants therein) and condoned the delay, and that the said order was not based on any legal principle. It was further

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submitted that the High Court ought not to have interfered with the order of the First Appellate Court, as the respondents/defendants were negligent in not filing the appeal in time and the delay has not been properly explained.

12. It was further submitted that the order of the First Appellate Court is well-reasoned and called for no interference. Further, after dismissal of the application filed under Order IX Rule 13 of the CPC for condonation of delay, even though the appeal filed under Section 96(2) of the CPC against the *ex-parte* decree dated 7.2.2017 was maintainable, the huge delay of 1116 days of filing the said appeal cannot be condoned without proper explanations.
13. Further, it was submitted that the High Court failed to appreciate the conduct of the respondents/defendants. There is no bar for them to file the Appeal under Section 96(2) of the CPC against the *ex-parte* decree while pursuing the application filed under Order IX Rule 13 of the CPC for condonation of delay. Therefore, in any case, the impugned judgment is erroneous, perverse, and warrants interference; it ought to be set aside by this Hon'ble Court.

SUBMISSIONS MADE BY THE RESPONDENTS/ DEFENDANTS

14. Learned counsel for respondents/defendants vehemently argued that the non-representation before the Trial Court by respondent no. 1/ defendant no. 1 and respondent no. 2/defendant no. 2 was neither wilful nor wanton.
15. It was further submitted that a plausible explanation has been given by the Respondents for the delay in preferring the said petition, and the High Court was convinced with the reasonable explanation given by the Respondents, and thereafter was pleased to pass the Impugned Order dated 25.04.2023 in favour of the Respondents.
16. It was further submitted that the High Court correctly relied upon the judgment of **N. Mohan (supra)** while passing the impugned order dated 25.04.2023, as it squarely applies to the instant case. The High Court, in its judicial wisdom, was of the considered opinion that the facts and circumstances of the instant case are similar to the aforesaid judgment.
17. Moreover, the learned counsel for Respondents argued that it is trite law that the application filed under Order IX Rule 13 of the CPC and

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the application filed under Order 41 Rule 3(A) of the CPC stand on a different footing. Further, in a similar case, the Hon'ble Supreme Court has laid down the dictum in ***Bhanu Kumar Jain v. Archana Kumar (2005) 1 SCC 787***, and has postulated as follows:

“38. The dichotomy, in our opinion, can be resolved by holding that whereas the defendant would not be permitted to raise a contention as regards the correctness or otherwise of the order posting the suit for ex parte hearing by the trial court and/or existence of a sufficient case for non-appearance of the defendant before it, it would be open to him to argue in the first appeal filed by him under Section 96(2) of the Code on the merits of the suit to enable him to contend that the materials brought on record by the plaintiffs were not sufficient for passing a decree in his favour or the suit was otherwise not maintainable. Lack of jurisdiction of the court can also be a possible plea in such an appeal. We, however, agree with Mr Chaudhari that the “Explanation” appended to Order 9 Rule 13 of the Code shall receive a strict construction as was held by this Court in Rani Choudhury [(1982) 2 SCC 596], P. Kiran Kumar [(2002) 5 SCC 161] and Shyam Sundar Sarma v. Pannalal Jaiswal [(2005) 1 SCC 436 : (2004) 9 Scale 270].”

Hence, in the light of the ratio laid down in the hereinabove judgment, it is manifestly implied that the Respondents are entitled to prefer the first appeal before the Hon'ble District & Session Judge, Ramanathapuram, Tamil Nadu and there is no bar due to the dismissal of their earlier petition filed under Order IX Rule 13 of the CPC.

18. Further, regarding the delay of 1116 days in filing the condonation of delay petition, the learned counsel referred to Section 14 of the Limitation Act and argued that in the instant case, the Respondents after exhausting their legal rights under Order IX Rule 13 of the CPC with informed legal counselling decided to exercise their legal right to refer the first appeal as against the final decretal order and judgment passed by the Trial Court. The time taken during the pendency of the Petition under Order IX Rule 13 of the CPC and also the revision petitions before the various judicial forums necessarily have to be excluded. A bare reading of Section 14 of the Limitation Act enjoins upon the adjudicating authorities to exclude the time thus taken

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during the pendency of petition filed under Order IX Rule 13 of the CPC needs to be taken into consideration for condoning the delay in filing the first appeal and, therefore, the High Court rightly cited and discussed the said provision and was pleased to pass the impugned order dated 25.04.2023 in favour of the Respondents.

19. It is further submitted that the High Court vide impugned order directed the Respondents to pay a sum of Rs. 1 lakh to the Appellant. Accordingly, the Respondents paid a sum of Rs. 1 lakh to the Appellant, but he refused to receive the same. Hence, the Respondents deposited the said amount with the court on 05.06.2023 and thereby complied with the order of the High Court. The said conduct of the Respondents proves his *bona fide* credentials.
20. It was submitted that the Respondent No. 2 holds a valid title as *bona fide* purchaser in respect of the Suit Schedule property vide registered Sale Deed dated 26.11.2015 executed by Respondent No. 1 in favour of the Respondent No.2 at the Sub-Registrar's Office. Since then, to date, the Respondent No. 2 is in possession and enjoyment of the disputed property.
21. Further, it was submitted that since Respondents are having the valid title and are also in possession and enjoyment of the Suit Schedule Property, the balance of convenience is in their favour only.
22. Moreover, learned counsel argued that irreparable damage, loss, and hardships would be caused to the Respondents if the instant appeal is allowed. At the same time, no loss or hardships could happen to the Appellant if the instant appeal is dismissed.

DISCUSSION AND ANALYSIS

23. We have carefully considered the submissions and perused the impugned judgment and materials on record. The point at issue for consideration is whether the delay is to be condoned or not, and if the delay is justifiable, then whether the case should be allowed to proceed on merits, or be dismissed on procedural grounds.
24. The facts of the present case are not in dispute. In the first round of litigation, Respondents could not succeed in setting aside the *ex-parte* decree passed by the Trial Court in the aforesaid suit, and hence they preferred the appeal suit along with the application for condonation of delay of 1116 days. The said application for condonation of delay

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of 1116 days was dismissed by the First Appellate Court vide order dated 08.02.2023. However, the High Court, while passing the impugned order dated 25.04.2023, relied upon the judgment of this Court passed in **N. Mohan (supra)** and allowed the application for condonation of delay of 1116 days and directed the First Appellate Court to proceed with the appeal suit on merits.

25. In the present case, from the perusal of the record, it can be observed that in the first round of litigation, the Respondents were duly served with the summons after institution of the aforesaid suit. In response, they entered an appearance and filed their written statement, thereby submitting themselves to the jurisdiction of the Trial Court. However, despite being present in the initial stage of proceedings, Respondents choose not to further appear before the Trial Court continuously. Consequently, the Trial Court was constrained to proceed *ex-parte* against them. Further, it is pertinent to note that the High Court has relied upon **N. Mohan (supra)**, while passing the impugned order, however, on comparison, the facts of the said case are different from the case at hand. In the said case, the summons to the Respondents was sent to their old address, and the same was returned unserved, and subsequently, the *ex-parte* decree was passed. In stark contrast, the present case is distinguishable since the summons was duly served and the respondents/defendants not only appeared but actively participated by filing their written statement.
26. Therefore, the dictum in **N. Mohan (supra)** cannot be applied to the instant matter but the High Court placed reliance upon the aforementioned judgment leading to the misappreciation of the facts. Consequently, the impugned order dated 25.04.2023 passed by the High Court is perverse in nature and is not in conformity with the legal principles. Accordingly, the impugned order dated 25.04.2023 is hereby set aside.
27. Proceeding further on the issue of condonation of delay of 1116 days in filing the appeal suit, we concur with the findings of the First Appellate Court passed in order dated 08.02.2023, that the Respondents raised the very same grounds in the present application for condonation of delay of 1116 days, that were raised in the applications (I.A. Nos. 462 of 2018 and 119 of 2019) filed under Order IX Rule 13 of the CPC in the earlier round of litigation; that is, the delay was neither wilful nor wanton. It is an admitted fact that the said applications (I.A.

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Nos. 462 of 2018 and 119 of 2019) were allowed by the Trial Court, which by way of civil revision petitions (C.R.P. (MD) Nos. 1688 & 1689 of 2019) were challenged before the High Court and the High Court reversed the order of the Trial Court. It is not in dispute that subsequently the order of the High Court was also affirmed by this Court vide order passed in S.L.P. (C) Nos. 2054 & 2055 of 2022, thereby dismissing the condonation of delay petitions filed by the Respondents.

28. Since the Respondents assigned the very same reasons in I.A. No. 1 of 2022 in Unnumbered A.S. No... of 2022 as raised in I.A. Nos. 462 of 2018 and 119 of 2019 that had already been dismissed by this Court vide S.L.P. (C) Nos. 2054 & 2055 of 2022, the application for condonation of delay of 1116 days cannot be sustained. This Court in S.L.P. (C) Nos. 2054 & 2055 of 2022, after going through the evidence placed on record, rightly held that the delay has not been properly explained. The relevant portion of the order is reproduced hereunder:

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained, and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the 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. 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.

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5.1 In the case of *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under:

“The 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.”

6. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the High Court. The Special Leave Petitions stand dismissed.

Pending application, if any, also stands disposed of.”

29. Therefore, this Court, having previously adjudicated upon the application for condonation of delay filed in I.A. Nos. 462 of 2018 and 119 of 2019, and having rendered a reasoned order passed in S.L.P. (C) Nos. 2054 & 2055 of 2022, after a thorough perusal of the evidence and materials on record, held that the grounds put forth were insufficient to constitute ‘sufficient cause’ under Section 5 of the Limitation Act, 1963. An order of this Court, passed upon judicial consideration, attains finality unless set aside through appropriate appellate or review mechanisms.
30. In the present appeal, the Respondents seek to raise the very same reason to condone the delay as were previously canvassed, without placing any fresh or additional material to distinguish the current reason from the one already discussed and dismissed. This Court is of the considered view that such a repetition of grounds already scrutinized and held untenable amounts to an abuse of the process of law. Although the applications for condonation of delay are filed under different provisions of the law but the said provisions provide for concurrent remedies through different mechanisms and if the application filed under one provision has already been dismissed by

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a court of competent jurisdiction, by applying its judicial mind and held that the reasons for delay were not sufficient, a subsequent application filed under different provision, reiterating the same contentions or grounds of delay, cannot be entertained.

31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the *bona fides* of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.
32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.
33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.
34. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the Impugned Order dated 25.04.2023 passed by the High Court is liable to be set aside and is, accordingly, set aside.
35. The appeal stands allowed.
36. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.