Balwant Singh (Dead) vs Jagdish Singh & Ors on 8 July, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3043, 2010 (8) SCC 685, 2010 AIR SCW 4848, (2010) 5 MAD LW 27, (2010) 4 PUN LR 271, (2011) 1 ALL WC 98, 2010 (6) SCALE 749, (2010) 2 WLC(SC)CVL 527, (2010) 6 ALLMR 480 (SC), (2010) 4 CIVLJ 475, (2010) 5 ANDHLD 97, (2010) 2 RENCR 137, (2010) 82 ALL LR 264, (2010) 4 RAJ LW 3517, (2010) 92 ALLINDCAS 103 (SC), (2010) 3 RECCIVR 856, (2011) 1 CLR 596 (SC), (2010) 3 ALL RENTCAS 1, (2010) 4 CIVILCOURTC 551, (2010) 6 SCALE 749

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Bench: B.S. Chauhan, Swatanter Kumar

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1166 OF 2006

Balwant Singh ....Petitioner

Versus

Jagdish Singh & Ors. ...Respondents

JUDGMENT

Swatanter Kumar, J.

1. The Learned Single Judge of the High Court of Punjab and Haryana at Chandigarh vide its Judgment dated 21 st May, 2003 set aside the concurrent Judgment passed by the Appellate Authority, Ambala, dated 11th December, 2001 and that of the Rent Controller dated 27th September, 2000, passing an order of ejectment against the respondents in exercise of the powers conferred under Section 15 of the Haryana Urban Rent (Control of Rent and Eviction) Act, 1973 (for short `the Act'). The petition had been instituted by the landlord against the tenant on the ground of non-payment of rent. The tenant had denied the relationship of landlord and tenant and even claimed title to the said property on the basis of an agreement dated 21st November, 1953 entered into between the predecessor in interest of the petitioner. The ground taken for ejectment of the tenant in the eviction petition was non- payment of rent which was only Rs. 200/- per month. As already noticed, the judgment of the Appellate Authority was set aside by the High Court vide its judgment dated 21st May, 2003 and it is this judgment of the High Court which has been assailed by

way of a Special Leave Petition before this Court. The leave to appeal was granted by the Court vide order dated 13th February, 2006.

2. During the pendency of the appeal on 28th November, 2007, the sole petitioner died. From the record, it appears that no steps were taken to bring on record the legal representatives of the deceased appellant for a considerable period of time on record. Somewhere on 15th April, 2010, I.A. No. 1 of 2010 has been filed along with I.A. No. 2 of 2010 praying for condonation of delay in filing the application for bringing the legal heirs on record. As is evident from the above narrated facts, the appellant died on 28th November, 2007 while the present applications have been filed on or about 15th April, 2010. Thus, there is delay of 778 days in filing these applications. The application for condonation of delay was seriously contested on behalf of the non-applicants. It was argued that no sufficient cause or even a reasonable cause has been shown for condoning the delay of more than two years and the appeal has already abated. The application, besides being vague at the face of it, contains untrue averments. As such, it is prayed that the application should be dismissed and consequently, the appeal would not survive for consideration.

3. Firstly, we have to deal with I.A. No. 2 of 2010, which is an application for condonation of delay in filing the application for bringing the legal representatives on record. The Learned Counsel appearing for the applicant stated that though no specific provision had been stated in the headings of any of the applications, I.A. No. 1 of 2010 should be treated as an application under Order 22 Rule 3 read with Section 151, of Code of Civil Procedure (hereinafter referred to as `CPC') while I.A. No. 2 of 2010 should be treated as an application under Order 22 Rule 9 read with Section 5 of the Limitation Act, 1962.

4. At the very outset, we may notice that the delay in filing the application I.A. No. 1 of 2010 is considerable and it cannot be disputed that the onus to show that sufficient cause exists for condonation of delay lies upon the applicant.

5. It is obligatory upon the applicant to show sufficient cause due to which he was prevented from continuing to prosecute the proceedings in the suit or before the higher Court. Here there is admittedly, a delay of 778 days in filing the application for bringing the legal representative on record. To explain this delay, the applicant has filed a one page application stating that they were not aware of the pendency of the appeal before the Court and came to know, only in March, 2010 from their counsel that the case would be listed for final disposal during the vacations in May, 2010. Then the applications, as already noticed, were filed on 15 th April, 2010. In order to examine the reliability and worthiness of the alleged sufficient cause for condonation of delay, it will be appropriate to refer to paragraph 2 of the application which is the only relevant paragraph out of the four paragraph application:

> "That the LRs. of the applicants are residing on different addresses because the LRs. of the appellant/deceased are in service and they were not aware of the pendency of any appeal before this Hon'ble Court. However, when the letter from the counsel for Sh. Balwant Singh were received at home at Ambala that the appeal is being listed for final hearing during vacation in the month of May, 2010 then these LRs. came to

know about the pendency of the appeal. Thereafter these LRs. contacted the counsel in the month of March, 2010 to find out the position of the case. When they contacted the counsel at New Delhi these LRs. the counsel was told about the death of Sh. Balwant Singh which had taken place in November, 2007. It was further pointed out to the counsel that the LRs. were not aware about the pendency of the appeal in this Court or about the requirement of law to bring the LRs. on record after the death of Balwant Singh. It is now they have come to know that the LRs. of Balwant Singh are required to be brought on record otherwise the appeal would abate."

6. It is clear from the bare reading of the above paragraph that the applicants were totally callous about pursuing their appeal. They have acted irresponsibly and even with negligence. Besides this, they have not approached the Court with clean hands. The applicant, who seeks aid of the Court for exercising its discretionary power for condoning the delay, is expected to state correct facts and not state lies before the Court. Approaching the Court with unclean hands itself, is a ground for rejection of such application. In para 2 of the I.A. NO. 1 of 2010, it has been shown that all the legal representatives of the deceased are residents of 9050/5, Naya Bas, Ambala City, (Haryana) and that there are no other legal heirs of the deceased. However, in para 4 of the I.A. No. 2 of 2010, it has been stated that the LRs. of the deceased were in service and were not aware of the pendency of the appeal, implying that they were living at different places and the letter of the lawyer was received at their residential address of Ambala. The stand taken in one application contradicts the stand taken in the other application. Furthermore, it is stated that they were not aware of the pendency of the appeal. This, again, does not appear to be correct inasmuch as one of the legal representatives of the deceased, namely Har-Inder Singh was examined in the Trial Court as AW4, who is the son of the deceased. It is difficult for the Court to believe that the person who has been examined as a witness did not even take steps to find out the proceedings pending before the highest Court of the land. Even the letter, alleged to have been written by the counsel, has not been placed on record and the application ex facie lacks bona fide. There is no explanation on record as to why the application was not filed immediately in March 2010, as they had come to know that the appeal was to be listed for hearing in the month of May, and still, till 15th April, 2010, no steps were taken to file the application. The cumulative effect of the above conduct of the legal representatives of the sole deceased, appellant clearly shows that they have acted with callousness, irresponsibly and have not even stated true facts in the application for condonation of delay. The approach and conduct of the applicants certainly would invite criticism. Moreover, it will be difficult for the Court to exercise its discretionary power in favour of the applicants. There is not even a whisper in the entire application as to why, right from the death of the deceased in November, 2007, the appellant did not take any steps whatsoever till 15th April, 2010 to inform their counsel about the death of the deceased and to bring the legal representatives on record.

7. The counsel appearing for the applicant, while relying upon the judgment of this Court in the case of Ram Sumiran v. D.D.C. [(1985) 1 SCC 431], Mithailal Dalsangar Singh v. Annabai Devram Kini, [(2003) 10 SCC 691] and Ganeshprasad Badrinarayan Lahoti v. Sanjeevprasad Jamnaprasad Chourasiya [(2004) 7 SCC 482] argued that this Court should take a liberal view and should condone the delay, irrespective of the above facts and in all these judgments the delay has been condoned by the Court. As per contra, the submission of the counsel for the non-applicants is that

the appeal has abated and no cause, much less sufficient, has been shown for setting aside the abatement. A right accrues in favour of the respondents in appeal and it will be unfair and unjust to take away their vested right on such flimsy and baseless grounds. It is a settled position of law that a suit or an appeal abates automatically if the legal representatives, particularly of the sole plaintiff or appellant, are not brought on record within the stipulated period. Rule 1 of Order 22, CPC mandates that the death of a defendant or a plaintiff shall not cause the suit to abate if the right to sue survives. In other words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event the right to sue survives, the concerned party is expected to take steps in accordance with provisions of this Order. Order 22 Rule 3, CPC therefore, prescribes that where the plaintiff dies and the right to sue has survived, then an application could be filed to bring the legal representatives of the deceased plaintiff/appellant on record within the time specified (90 days). Once the proceedings have abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the Court of Competent jurisdiction in terms of Order 22 Rule 9 (3), CPC. Order 22 Rule 9 (3) of the CPC contemplates that provisions of Section 5 of the Indian Limitation Act, 1963 shall apply to an application filed under Sub Rule 2 of Rule 9 of Order 22, CPC. In other words, an application for setting aside the abatement has to be treated at par and the principles enunciated for condonation of delay under Section 5 of the Limitation Act are to apply para materia. Section 3 of the Limitation Act requires that suits or proceedings instituted after the prescribed period of limitation shall be dismissed. However, in terms of Section 5, the discretion is vested in the Court to admit an appeal or an application, after the expiry of the prescribed period of limitation, if the appellant shows `sufficient cause' for not preferring the application within the prescribed time. The expression `sufficient cause' commonly appears in the provisions of Order 22 Rule 9 (2), CPC and Section 5 of the Limitation Act, thus categorically demonstrating that they are to be decided on similar grounds. The decision of such an application has to be guided by similar precepts. It will be appropriate for us to trace the law enunciated by this Court while referring, both the provisions of Order 22 Rule 9, CPC and Section 5 of the Limitation Act. In the case of Union of India v. Ram Charan, [AIR 1964 SC 215], a three Judge Bench of this Court was concerned with an application filed under Order 22 Rule 9, CPC for bringing the legal representatives of the deceased on record beyond the prescribed period of limitation. The Court expressed the view that mere allegations about belated knowledge of death of the opposite party would not be sufficient. The Court applied the principle of `reasonable time' even to such situations. While stating that the Court was not to invoke its inherent powers under Section 151, C.P.C. it expressed the view that the provisions of Order 22 Rule 9, CPC should be applied. The Court held as under:

"8. There is no question of construing the expression `sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is

deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

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10....The procedure, requires an application for the making of the legal representatives of the deceased plaintiff or defendant a party to the suit. It does not say who is to present the application. Ordinarily it would be the plaintiff as by the abatement of the suit the defendant stands to gain. However, an application is necessary to be made for the purpose. If no such application is made within the time allowed by law, the suit abates so far as the deceased plaintiff is concerned or as against the deceased defendant. The effect of such an abatement on the suit of the surviving plaintiffs or the suit against the surviving defendants depends on other considerations as held by this Court in State of Punjab v.

Nathu Ram, [AIR 1962 SC 89 and Jhanda Singh v. Gurmukh Singh, C.A. No. 344 of 1956, D/-10-4-1962 (SC). Any way, that question does not arise in this case as the sole respondent had died.

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12....The legislature further seems to have taken into account that there may be cases where the plaintiff may not know of the death of the defendant as ordinarily expected and, therefore, not only provided a further period of two months under Art. 171 for an application to set aside the abatement of the suit, but also made the provisions of Section 5 of the Limitation Act applicable to such applications. Thus the plaintiff is allowed sufficient time to make an application to set aside the abatement which, if exceeding five months, be considered justified by the Court in the proved circumstances of the case. It would be futile to lay down precisely as to what considerations would constitute `sufficient cause' for setting aside the abatement or for the plaintiff's not applying to bring the legal representatives of the deceased defendant on the record or would be held to be sufficient cause for not making an application to set aside the abatement within the time prescribed. But it can be said that the delay in the making of such applications should not be for reasons which indicate the plaintiff's negligence in not taking certain steps which he could have and should have taken. What would be such necessary steps would again depend on the circumstances of a particular case and each case will have to be decided by the court on the facts and circumstances of the case. Any statement of illustrative circumstances or facts can tend to be a curb on the free exercise of its mind by the Court in determining whether the facts and circumstances of a particular case amount to `sufficient cause' or not. Courts have to use their discretion in the matter soundly in the interests of justice."

8. In the case of P.K. Ramachandran v. State of Kerala, [(1997) 7 SCC 556] where there was delay of 565 days in filing the first appeal by the State, and the High Court had observed, "taking into consideration the averments contained in the affidavit filed in support of the petition to condone the

delay, we are inclined to allow the petition". While setting aside this order, this Court found that the explanation rendered for condonation of delay was neither reasonable nor satisfactory and held as under:

> "3. It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay.
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> 4. That apart, we find that in the application filed by the respondent seeking condonation of delay, the thrust in explaining the delay after 12.5.1995 is:
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> ".....at that time the Advocate General's office was fed up with so many arbitration matters (sic) equally important to this case were pending for consideration as per the directions of the Advocate General on 2.9.1995."

5. This can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub-Judge, Kollam on 30-10-1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General and in accordance with their opinion, it was decided that there was no scope for filing the appeal but later on, despite the opinion referred to above, the appeal was filed as late as on 18.1.1996 without disclosing why it was being filed. The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent-State for condonation of the inordinate delay of 565 days.

6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs."

9. In the case of Mithailal Dalsangar Singh (supra), a Bench of this Court had occasion to deal with the provisions of Order 22 Rule 9, CPC and while enunciating the principles controlling the application of and exercising of discretion under these provisions, the Court reiterated the principle that the abatement is automatic and not even a specific order is required to be passed by the Court in that behalf. It would be useful to reproduce paragraph 8 of the said judgment which has a bearing on the matter in controversy before us:

"8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for."

10. Another Bench of this Court in a recent judgment of Katari Suryanarayana v. Koppisetti Subba Rao, [AIR 2009 SC 2907] again had an occasion to construe the ambit, scope and application of the expression `sufficient cause'. The application for setting aside the abatement and bringing the legal heirs of the deceased on record was filed in that case after a considerable delay. The explanation rendered regarding the delay of 2381 days in filing the application for condonation of delay and 2601 days in bringing the legal representatives on record was not found to be satisfactory. Declining the application for condonation of delay, the Court, while discussing the case of Perumon Bhagvathy Devaswom v. Bhargavi Amma [(2008) 8 SCC 321] in its para 9 held as under:

"11. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words `sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

11. The Learned Counsel appearing for the applicant, while relying upon the cases of Ram Sumiran, Mithailal Dalsangar Singh and Ganeshprasad Badrinarayan Lahoti (supra), contended that the Court should adopt a very liberal approach and the delay should be condoned on the mere asking by the applicant. Firstly, none of these cases is of much help to the applicant. Secondly, in the case of Ram Sumiran (supra), the Court has not recorded any reasons or enunciated any principle of law for exercising the discretion. The Court, being satisfied with the facts averred in the application and particularly giving benefit to the applicant on account of illiteracy and ignorance, condoned the delay of six years in filing the application. This judgment cannot be treated as a precedent in the

eyes of the law. In fact, it was a judgment on its own facts.

12. In the case of Ganeshprasad Badrinarayan Lahoti (supra), the High Court had rejected the application, primarily, on the ground that no separate application had been filed for substitution and for setting aside the abatement. The Court held that the principles of res judicata were not applicable and the application could be filed at a subsequent stage. Thus, the delay was condoned. We must notice here that the earlier judgments of the equi benches and even that of larger benches (three Judge Bench) in the case of Ram Charan (supra) were not brought to the notice of the Court. Resultantly, the principles of law stated by this Court in its earlier judgments were not considered by the Bench dealing with the case of Ganeshprasad Badrinarayan Lahoti (supra).

13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. We may state that even if the term `sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of `reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of Ramlal and Others v. Rewa Coalfields Ltd., [AIR 1962 SC 361] this Court took the view:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..."

14. In the case of Union of India v. Tata Yodogawa Ltd., [1988 (38) Excise Law Times 739 (SC)], this Court while granting some latitude to the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper to explain what legal problems occurred in filing the Special Leave Petition, the application for condonation of delay was dismissed. Similarly, in the case of Collector of Central Excise, Madras v. A.MD. Bilal & Co., [1999 (108) Excise Law Times 331 (SC)], the Supreme Court declined to condone the delay of 502 days in filing the appeal because there was no satisfactory or reasonable explanation rendered for condonation of delay. The provisions of Order 22 Rule 9, CPC has been the subject matter of judicial scrutiny for considerable time now. Sometimes the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus, it is evident that it is difficult to state any straight-jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted

the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression `sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect `sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression `sufficient cause' implies the presence of legal and adequate reasons. The word `sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]

15. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:-

> "13 (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words `sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases.

While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (supra)

16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

17. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court. It is the abnormal conduct on the part of the applicants, particularly Har-Inder Singh, who had appeared as AW4 in the trial and was fully aware of the proceedings, but still did not inform the counsel of the death of his father. The cumulative effect of all these circumstances is that the applicants have miserably failed in showing any `sufficient cause' for condonation of delay of 778 days in filing the application in question.

18. Thus, we have no hesitation in dismissing I.A.No.2 of 2010 and consequently, I.A.No.1 of 2010 does not survive for consideration and is also dismissed. Resultantly, the appeal having already abated also stands dismissed. However, in the facts of the case, there shall be no orders as to costs. .....J. [DR. B.S. CHAUHAN] .....

J. [SWATANTER KUMAR] New Delhi July 8, 2010.