GAHC010001572023

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/232/2023

ORIENTAL INSURANCE COMPANY LTD.

(A CENTRAL GOVT. UNDERTAKING) HAVING ITS REGIONAL OFFICE AT GUWAHATI, G.S. ROAD, ULUBARI, GUWAHATI- 781007 REPRESENTED BY THE DEPUTY MANAGER, GAUHATI REGIONAL OFFICE, ULUBARI, GUWAHATI- 781005.

VERSUS

DIPANKAR SARMAH AND 5 ORS. S/O PROBHAT SARMAH,
VILL.- KAKAJAN (GOROWAL CHUNGI),
P.O. AND P.S.- TIOK,
DIST.- JORHAT, ASSAM, PIN- 785112.
TEMPORARY ADDRESS-
C/O PHATIK CH. SARMA,
VILL.- BAIDYATUP, P.O.- MADHUPUR,
P.S.- SADAR,
DIST.- NAGAON, ASSAM, PIN- 782003.

2:PRABIN KALITA
S/O LATE NIBHARKHA KALITA
VILL.- AZARA
P.O.- SONESWAR
P.S.- KAMALPUR
DIST.- KAMRUP
ASSAM
PIN- 781017.

3:MD. SADDAM HUSSAIN

S/O LATE RUSTAM ALI
VILL.- UDIAANA
P.O.- UDIANA
P.S.- RANGIA
DIST.- KAMRUP
ASSAM
PIN- 781354.

4:SYEDA LUTFA RAHMAN
W/O SYED MUKIMUR RAHMAN
R/O DISPUR RAJDHANI MASZID ROAD
P.O. AND P.S.- DISPUR
DIST.- KAMRUP (M)
ASSAM
PIN- 781005.

5:SAIYAD JUNEIDUL HAQUE
S/O SAIYAD JEHURUL HAQUE
R/O DISPUR RAJDHANI MASZID ROAD
P.O. AND P.S.- DISPUR
DIST.- KAMRUP (M)
ASSAM
PIN- 781005.

6:NEW INDIA ASSURANCE CO. LTD.
REGIONAL OFFICE AT GUWAHATI
G.S. ROAD
STAR CITY COMPLEX
LACHITNAGAR
GUWAHATI
ASSAM
PIN- 781007

Advocate for the Petitioner : MS. R D MOZUMDAR, MR. S P SHARMA,MS. C MOZUMDAR

Advocate for the Respondent : MR. R C PAUL (r-6), MS. D J BORAH,MR. B CHETRI,MS. H SARMA (R2),MR A U AHMED (R2)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
O R D E R

20.08.2024

Heard Ms. R.D. Mazumdar, learned counsel for the applicant; Mr. B. Chetry, learned counsel for the opposite party No.1; and Mr. R. C. Paul learned counsel for the opposite party No. 6.

2. This interlocutory application, under Section 5 of the Limitation Act, 1963, is preferred by the applicant; The Oriental Insurance Co. Ltd. for condonation of delay of 1277 days in preferring an appeal, against the Judgment, Order and Decree dated 11.11.2016, passed by the learned Member, Motor Accident Claims Tribunal, Nagaon, in Motor Accident Claim Case No. 147/2012.

3. It is to be noted here that vide impugned Judgment, Order and Decree dated 11.11.2016, the learned Member in Motor Accident Claims Tribunal had directed the appellant to pay a sum of Rs. 3,46,503/, being the compensation, within a period of 3 months from the date of judgment and award with 7% interest from the date of filing the claim petition.

4. The background facts leading to filing of the present petition are adumbrated here in below:-

> "Shri Dipankar Sharma, the opposite party No.1 herein, had filed a claim petition under Section 166 Motor Vehicle Act (M.V. Act) before the learned Member, Motor Accident Claims Tribunal, Nagaon (Assam) on account of injuries sustained by him in a motor accident. On 18.03.2011 at about 7.20 pm, while he was proceeding towards Kamakhya Gate from Bharalumukh along with his friends in a vehicle bearing registration No. AS-01/Z-7455. The learned Member MACT, Nagaon had, vide judgment and

award dated 11.11.2016, had directed the applicant Oriental Insurance Co. Ltd. to pay a sum of Rs. 3,46,503/, being the compensation, to the opposite party No.1, within a period of 3 months from the date of judgment and award with 7% interest from the date of filing the claim petition. Then being aggrieved the applicant herein had preferred a review petition before the learned Member, MACT, Nagaon. But, the learned Tribunal vide order dated 06.06.2022 had dismissed the said review petition. Thereafter, the applicant has decided to prefer an appeal under Section 173 of the M.V. Act against the judgment and award dated 11.11.2016. Then while preparing the appeal after completion of necessary formalities, delay of 1177 days occurred. According to the applicant there was no willful negligence or lapses on the part of the applicant and it were a *bona fide* one, and therefore, it is contended to condone the same."

5. The opposite party/respondent No.1 has opposed the petition by filing written objection for condoning the delay. It is stated that while the judgment and award was passed on 11.11.2016, the applicant has failed to give proper explanation and the reason assigned is casual in nature and are not sufficient to condone the same. That the review petition was filed in the year 2018 and there was no explanation from the date of pronouncement of judgment till filing the review petition. It is also stated that after dismissal of the review petition on 06.06.2022, no explanation is forthcoming for the period of 20.06.2022 to 30.01.2023, till filing of appeal. As no proper ground has been assigned for the delay, it is contended to dismiss the petition.

6. Ms. Mazumdar, the learned counsel for the applicant submits that the while the judgment and award was passed on 11.11.2016, the applicant had pursued one review petition before the learned Tribunal and the same was dismissed on 06.06.2022, and the period, for which the review petition was pending before the

learned Member, MACT, Nagaon has to be excluded and after exclusion of the same there was delay of only 57 days. Ms. Mazumdar also submits that thereafter, the applicant came to know about dismissal of review petition only on 20.06.2022. Thereafter, the applicant had applied for certified copy on 06.07.2022 and received the same on 11.07.2022; thereafter, legal opinion was obtained from the counsel of High Court on 01.07.2022 and approval from the competent authority was obtained on 18.07.2022, and the file was handed over to chamber of the present counsel on 22.07.2022, and thereafter, the learned counsel took time till 03.08.2022, on which the appeal was filed. Ms. Mazumdar submits that there was no willful negligence on the part of the applicant and that the award was granted beyond the statutory as well as settled proposition of law and unless the same is condoned the applicant will suffer immense hardship and that the law of limitation is not meant for destroying the right of the parties and it is settled that if sufficient cause is shown, the court has to take a liberal approach and that the applicant has arguable point in the appeal which has sufficient merit and therefore, it is contended to allow the petition. Ms. Mazumdar has referred following decision in support of her submission:-

(i) **State of Nagaland vs. Lipokao and Ors. reported in (2005) 3 SCC 752.**

7. Per contra, Mr. Chetry, learned counsel for the opposite party No. 1 has vehemently opposed the petition. Mr. Chetry, submits that while the judgment and award was passed on 11.11.2016, the applicant has failed to give proper explanation why the same could only be filed on 31.01.2023. He further submits that the reason assigned by the applicant is casual in nature and are not sufficient to condone the inordinate delay. Mr. Chetry has pointed out that the review petition was filed in the year 2018 only, though the judgment and award was passed on 11.11.2016, and that there was no explanation from the date of

pronouncement of judgment till filing of the review petition. It is the further submission of Mr. Chetry that after dismissal of the review petition on 06.06.2022, no explanation is forthcoming for the period of 20.06.2022 to 30.01.2023, till filing of appeal and since no proper explanation is forthcoming for the delay, the petition may be dismissed. Mr. Chetry has also referred following case laws in support of his submission :-

(i) The ICIC Lombard General Insurance Co. Ltd. vs. Rupnath Brahma and another in I.A. 1296/2015;

(ii) Assam State Transport Corporation vs. Smti Bimala Devi & Ors., reported in 1997(2) GLT 349;

(iii) Union of India (UOI)) and Ors. vs. Sunita Agarwal and Anr., reported in [2003] 0 Supreme (Gau) 579;

(iv) Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, reported in (2008) 17 SCC 448,

(v) Office of the Chief Post Master General and Ors. vs. Living Media India Ltd. and Anr., reported in AIR 2012 SC 1506;

8. Mr. R.C. Paul, the learned counsel for the respondent/opposite party No.6 has subscribed the submission of Mr. Chetry, the learned counsel for the respondent/opposite party No.1.

9. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the case laws referred by learned counsel for both the parties.

10. Before directing a discussion into the points referred by the learned counsel it would be in the interest of justice to go through the decision of Hon'ble Supreme Court in respect of condonation of delay presently holding the field so to deal with the issue with greater precision.

11. Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag vs. Mst. Katiji:** reported in **(1987) 2 SCC 107,** has observed as under:-

> **"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy, and such a liberal approach is adopted on principle as it is realized that:**
>
> **1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.**
> **2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.**
> **3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.**
> **4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.**
> **5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.**

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

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even- handed justice on merits in preference to the approach which scuttles a decision on merits."

12. Again in **N. Balakrishnan v. M. Krishnamurthy:** reported in **(1998) 7 SCC 123,** Hon'ble Supreme Court went a step further and made the following observations:-

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

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is

that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

13. In the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649,** Hon'ble Supreme Court, referring to earlier authorities**,** broadly culled out the principles of condonation of delay as under:-

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

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

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

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

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

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

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

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

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

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

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

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

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

14. To the aforesaid principles, Hon'ble Supreme Court also added some more guidelines taking note of the present day scenario, in the said case. They are: **-**

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

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

15. Again in the case of **Pundlik Jalam Patil(supra),** while dealing with the issue of condonation of delay, Hon'ble Supreme Court has held as under:-

"29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

31. It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. The Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from

consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings."

16. The legal proposition, which can be crystallized from the aforesaid decisions and discussion, is that courts are not supposed to legalize injustice, but are obliged to remove injustice. Therefore, liberal, pragmatic, justice-oriented, non- pedantic approach has to be adopted while dealing with an application for condonation of delay if 'sufficient cause' is being shown. The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose and regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation. The paramount and pivotal consideration is substantial justice; the technical considerations should not be given undue and uncalled for emphasis. In respect of deliberate causation of delay the presumption is not available but, gross negligence on the part of the counsel or litigant is to be taken note of, besides lack of bona fides imputable to a party seeking condonation of delay, which is a significant and relevant fact. The courts should not adhere to strict proof, but required to be vigilant so that there is no real failure of justice. The approach of the court must be liberal but at the same time it must be reasonable also. In case of inordinate delay, strict approach is required to be taken while in case of delay of short duration, a liberal delineation is required. The fundamental principle, being weighing the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. While condoning delay the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into

consideration. In the case of the explanation, being offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation. The entire gamuts of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. The State or a public body or an entity, representing a collective cause, should be given some acceptable latitude. But, the law of limitation is same for citizen and for governmental authorities.

17. Thus, having informed ourselves about the proposition of law presently holding the field in respect of condonation of delay, now an endeavour will be made how far the applicant has been able to explain the delay of 1277 days in preferring the connected appeal.

18. I have gone through the petition and the documents enclosed therewith carefully. Indisputably, the judgment and award, which is being sought to be impugned in the connected appeal, was delivered on 11.11.2016. Thereafter the applicant had preferred one review petition before the learned Tribunal under Section 114 CPC read with Order 47 Rule 1 CPC. The same was dismissed on 06.06.2022. Thereafter, the application for condonation of delay petition under Section 5 of the Limitation Act read with proviso to Section 173 of the M.V. Act, with the connected appeal was filed on 03.08.2022. The explanation, so forthcoming for the delay is reflected in the tabular form as under:-

Sl. No.	**Date**	**Action taken**
01.	11.11.2016	Judgment and Award delivered by the Tribunal.

02.		Review petition filed before the Tribunal
03.	06.06.2022	Review petition was dismissed
04.	20.06.2022	Dismissal of the petition came to knowledge
05.	06.07.2022	Certified Copy applied
06.	11.07.2022	Certified copy delivered
07.	01.07.2022	Legal opinion from counsel of High Court obtained
07.	18.07.2022	Approval from the competent authority obtained
08.	22.07.2022	File handed over to the present Counsel to file an appeal
09.	03.08.2022	Present Counsel allegedly filed appeal
10.	25.01.2023	Application for condonation of delay filed.

19. It is well settled that in view of Section 14 of the Limitation Act in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded. Section 14 of the said Act read as under:-

> **14. Exclusion of time of proceeding bona fide in court without jurisdiction. –**
>
> **(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.**

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a)in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b)a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) mis-joinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

20. In the case in hand, indisputably, after delivery of the judgment and award, which is being sought to be impugned in the connected appeal, the applicant had pursued a review petition before the tribunal and the same was dismissed on 06.06.2022. The dismissal came to the knowledge of the applicant on 20.06.2022. That being so, in view of Section 14, the aforesaid period has to be excluded in computing the period of limitation.

21. Now, what left to be seen is the explanation for the period from 11.07.2022, till 25.01.2023.

22. Though Ms. Mazumdar, the learned counsel for the applicant submits that in fact the appeal was filed on 03.08.2022, and from 06.06.2022 only 57 days delay in filing the appeal, and that the same stands explained, yet, the submission of Ms. Mazumdar left this court unimpressed. From the date of receiving of certified copy of the order dated 06.06.2022, on 11.07.2023, till 03.08.2022 for 23 days the explanation so forth coming, appears to be not satisfactory. Though Ms. Mazumdar submits that some official formalities are required to be observed before filing of the appeal on 03.08.2022, yet, the same cannot be accepted in view of the fact that the doctrine of equality before law demands that all litigants, including the State as a litigant, are to be accorded the same treatment and the law has to be administered in an even-handed manner, as held in the case of **Mst. Katiji (supra).** It is however, well settled that being a public body the applicant deserve some acceptable latitude. This principle is laid down in the case of **Lipokao (supra)**, referred by Ms. Mazumdar also. But, the applicant has failed to make out a cause where the public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents. That being so, the decision referred by her would not advance her argument.

23. It also appears that while appeal was filed on 03.08.2022, the same was not listed before the court till 01.02.2023. It was, only after filing of the present I.A. on 25.01.2023, the same was listed 01.02.2023 along with the I.A. There is an endorsement of the Registry on the page No. 2 of the Appeal, which indicates that the file was returned on 03.01.2023. There is no explanation at all for not listing the appeal from 03.08.2022 till 01.02.2023. Mr. Chetry, the learned counsel for the respondent No.2 has rightly pointed out this during argument and there appears to be substance in the same. This implies that the applicant is not serious in pursuing the matter as it has not taken any step to file the condonation petition along with

the appeal. Only on 25.01.2023, the application for condonation was filed. Thus, lack of bona-fides is writ large on the face of the record.

24. Thus, having carefully scrutinized the entire gamut of facts this court is of the considered opinion that the delay of 1277 days, which occurred here in filing the connected appeal, could not be explained properly by the applicant. There is serious lapse on the part of the applicant and if the same is condoned, it would amount to putting a premium upon the lapses on the part of the applicant.

25. I have gone through the decisions referred by Mr. Chetry, the learned counsel for the opposite party No.1 and the same undoubtedly, has strengthened his submission. But, in view of discussion and finding of this Court, herein above, discussion of those cases are found to be not necessary for deciding the present application.

26. In the result, this Court finds no merit in this application. Accordingly, the I.A. and the connected appeal stand dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant