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

Case No. : I.A.(Civil)/2270/2016

1: JASHOP ALI,
S/O LATE JALAL FAKIR

2: SARBESH ALI
S/O LATE JALAL FAKIR
BOTH ARE R/O VILL. WEST KHAIRABARI
MOUZA GOBORDHANA
P.S. BARPETA ROAD
DIST. BARPETA
ASSAM

VERSUS

1: SUFIA KHATUN,
D/O LATE JALAL FAKIR,
W/O SONAULLAH, VILL. CHATALA MULAKATA,
MOUZA SARUKHETRI,
DIST. BARPETA, ASSAM.

2:MR. MOKIBUR RAHMAN
ADVOCATE
BARPETA BAR ASSOCIATION
P.O., P.S. and DIST. BARPETA
ASSAM

Advocate for the Petitioner : MR.M U MAHMUD, MR.M R Z CHOUDHURY,MR.M ALI,MR.A DAS

Advocate for the Respondent : DR.B AHMEDR-1, MR.N HAQUE(R-1),MR.S R BARBHUIYA(R-1),MR.M HUSSAIN(R-1)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

O R D E R

28.08.2024

Heard Mr. M.U. Mahmud, learned counsel for the applicants and Mr. N. Hoque, learned counsel for the opposite party No.1. None appears for the respondent No.2.

2. This interlocutory application, under Section 5 of the Limitation Act, 1963, is preferred by two applicants, namely, Jashop Ali and Sarbesh Ali for condonation of delay of 1944 days in preferring Second Appeal, against the Judgment, Order and Decree dated 12.05.2011, passed by the learned Civil Judge, Barpeta in Title Appeal No.21/2010.

3. It is to be noted here that vide impugned Judgment, Order and Decree dated 12.05.2011, the learned Civil Judge, Barpeta in Title Appeal No.21/2010, has set aside the judgment and decree dated 19.12.2009, passed by the learned Munsiff No. 1, Barpeta. It is also to be noted here that learned Munsiff, Barpeta has dismissed the Title Suit No. 208/2008, instituted by the opposite parties against the present applicants.

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

> "The respondents/opposite parties had instituted a Title Suit before the learned Munsiff, Barpeta being Title Suit No. 208/2008 against the present applicants and others, for declaration of right title and interest over a plot of land described in Schedule 'A', 'B' and 'C'. The present applicants have contested the Suit by filing written statement. Thereafter, hearing both

sides the learned Munsiff, Barpeta had dismissed the Suit vide Judgment and Decree dated 19.12.2009. Then being aggrieved the respondent/opposite parties had preferred an appeal being T.A. No. 21/2010. Thereafter, hearing both sides, the learned Civil Judge, Barpeta had set aside the impugned judgment and decree so passed by the learned Munsiff, vide Judgment and Decree dated 12.05.2011.

The applicants are willing to prefer a Second Appeal against the Judgment and Decree dated 12.05.2011, passed by the learned Civil Judge, Barpeta. But when they came to know about delivery of the Judgment and Decree then 1944 days elapsed. 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. 2 remained unrepresented though notice was served upon him. And though respondent No.1 is represented by Mr. N. Haque, he has not filed any written objection..

6. Mr. Mahmud, the learned counsel for the applicants submits that the while the Judgment and Decree was passed on 12.05.2011, the Decree was in fact signed on 24.08.2011. Mr. Mahmud also submits that the applicants' are illiterate persons and they were unaware of the judgment so passed by Munsiff and while they have engaged an Advocate, the respondent No.2 herein, but the respondent No.2 had never informed them about the outcome of the appeal. And when the Lat Mondal with the respondents/decree holders came to the land for execution of the decree, only then they came to know about the judgment and decree so passed by the learned Civil Judge, Barpeta on 12.05.2011. Thereafter, the applicants had filed petition for certified copy on 09.11.2016 and received the same on 15.11.2016 and also they have obtained the case file from the

respondent No.2. Thereafter he had collected some other documents on 17.11.2016 and thereafter handed over the same to his lawyer and filed the appeal on 09.12.2016. In the meantime 1944 days elapsed and that the same was not intentional and deliberate and the same was circumstantial and that the applicants have explained the same in paragraph No. 4 of the petition. Mr. Mahmud also submits that that there is merit in the connected appeal and unless the delay is condoned the applicants will suffer irreparable loss. Mr. Mahmud, therefore contended to allow the application. Mr. Mahmud has referred following decisions of Hon'ble Supreme Court in support of his submission:-

(i) **Sukh Dutt Ratra and Another(S) vs. State of Himachal Pradesh and Other(s)**, reported in **2022 SCC ONLINE SC 410**;

(ii) **Vidya Devi vs. State of Himachal Pradesh and Others**, reported in **(2020) 2 SCC 569**;

(iii) **Tukaram Kana Joshi and Others Through Power of Attorney Holder vs. Maharastra Industrial Development Corporation and Others**, reported in **(2013) 1 SCC 353**;

(iv) **Rafiq and Another vs. Munshilal and Another**, reported in **(1981) 2 SCC 788**.

7. Per contra, Mr. N. Hoque, learned counsel for the opposite party No. 1 has vehemently opposed the petition. Mr. Hoque submits that, while the judgment and decree was passed on 12.05.2011, the applicant has failed to give proper explanation why the same could only be filed on 09.12.2016, after delay of 1944 days and though an explanation is put forwarded yet the same is not satisfactory and therefore Mr. Hoque has contended to dismiss the petition. Mr. Hoque has also referred a decision of Hon'ble Supreme Court in the case of **Pathapati**

Subba Reddy (Died) By L.Rs. & Ors. vs. The Special Deputy Collector (LA), in **Special Leave Petition (Civil) No. 31248 of 2018.**

8. 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.

9. 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.

10. Hon'ble Supreme Court in the case of **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 sub-serves 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.”

11. Again in the case of **N. Balakrishnan vs. 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."

12. Again 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.

13. 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.

14. Again in the case of **Pundlik Jalam Patil (Died) By L.Rs. vs. Executive Engineer Jalgaon Medium Project and another**, reported in **(2008) 17 SCC 448**, 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."

15. 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.

16. 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 1944 days in preferring the connected appeal.

17. 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 12.05.2011. It also appears that the applicant had came to know about the disposal of the Title Appeal when the Lat Mondal with the respondents/decree holders came to the land for execution of the decree, only then they came to know about the judgment and decree so passed by the learned Civil Judge, Barpeta on 12.05.2011. Thereafter, the applicants had applied for certified copy on 09.11.2016. They received the certified copy on 15.11.2016 and also they have obtained the case file from the respondent No.2. Then having collected some other documents they left for Guwahati on 17.11.2016 and thereafter, handed over the same to their lawyer and thereafter, their lawyer had filed the appeal on 09.12.2016. It also appears that the respondent No.2 had not informed the applicants till 09.11.2016, about the outcome of the Title Appeal. The explanation, so forthcoming for the delay is reflected in the tabular form as under:-

Sl. No.	**Date**	**Action taken**
01.	12.05.2011	Judgment and Award delivered by the Civil Judge (Sr. Divn.) Barpeta.

02.	Nil	Applicant Came to know about disposal of the T.A. No. 21/2010 when the respondent with Lat Mondal came to execute the decree.
03.	09.11.2016	Applied for Certified Copy
04.	15.11.2016	Certified Copy received
05.	17.11.2016	Left for Guwahati and handed over the case file to his Lawyer
06.	09.12.2016	Second Appeal filed.

18. Now, what left to be seen is the explanation for the period 1944 days is satisfactory. Pursuing claims, which becomes stale over the passage of time in no manner sub-serves public interest. It is well settled that the laws come to the assistance of the vigilant and not of the sleepy.

19. Though Mr. Mahmud, the learned counsel for the applicants submits that in fact the respondent No.2 had not informed the applicant about the outcome of the Title Appeal and the applicants came to know about disposal of the appeal when the decree holder along with Lat Mandal came to execute the decree, yet the same is found to be not at all satisfactory in as much as the applicant could not tell the date on which the decree holder came to execute the decree. It is also not believable that after receiving notice from the appellate court they had engaged respondent No.2 and till the month of October 2016 they even find it not necessary to enquire about the outcome of the appeal.

20. Thus, having carefully scrutinized the entire gamut of facts this court is of the considered opinion that the delay of 1944 days, which occurred here in filing the connected appeal, could not be explained properly by the applicants. There is

serious lapse on the part of the applicants and if the same is condoned, it would amount to putting a premium upon the lapses on the part of the applicants. This court is not oblivious of the fact that rules of limitation are not meant to destroy the rights of the parties, rather they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly and the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Despite this court is of the view that the ground assigned for delay of 1944 days, is grossly inadequate and insufficient.

21. The submission of Mr. Mahmud, the learned counsel for the applicants and also of Mr. Hoque, the learned counsel for the opposite party No.1 received due consideration of this court. Also I have considered gone through the decisions referred by Mr. Mahmud, the learned counsel for the applicants. There is no quarrel about the proposition of law laid down in the said cases. But, in view of discussion and finding of this Court, herein above, discussion of all those cases referred by them are found to be not necessary for deciding the present application.

22. 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