

19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA 504/2009

% ***Judgment Delivered on: 28.10.2010***

VOYAGES INDIA P.LTD. Appellant
Through: Mr.Pradeep R. Tiwari, Mr.Praffula
R. Tiwari and Mr.Sukumar, Advocates

versus

INDIAN HOTELS CO. LTD. Respondent
Through: Mr.Jitender Vashisht, Adv. for respondent

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment? **YES**
2. To be referred to Reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

G.S.SISTANI, J. (ORAL)

CM.No.18785/2009

1. Present application has been filed under Section 5 of the Limitation Act, seeking condonation of delay of six years in re-filing the appeal. Admittedly, the appeal against the order dated 15.01.2003, in the present case was filed within the period of limitation on 21.04.2003.
2. Counsel for the appellant submits that the reasons for delay in re-filing the appeal were on account of inaction on the part of the advocate, who was engaged by the appellant herein. While referring to the application for condonation of delay, counsel for the appellant submits that after filing of the appeal, the earlier advocate had given an assurance to the appellant that the

appeal had been admitted and would be listed in due course. It is next submitted that the appellant regularly enquired from the advocate, but was always told that the matter is pending in the court. It is submitted that in the year 2008, in a connected matter filed by the appellant herein against the same respondent in the National Consumer Forum for deficiency of service, the advocate engaged in the National Consumer Forum asked the appellant for a copy of the appeal filed in the present matter. The appellant contacted the earlier counsel to get the file of the Regular First Appeal, which was stated to be pending in the High Court. It is submitted that only when the appellant insisted upon the earlier counsel for records of the case and only after great persuasion he was handed over the record of the appeal and it is at that stage the appellant learnt that the appeal was not re-filed after it was returned by the High Court, even after a long span of 5 years.

3. It is submitted by counsel for the appellant that once the appellant received the paper book from the earlier counsel the matter was re-filed in the Registry on 29.08.2009. It is pointed out that the appellant issued a legal notice to the earlier lawyer for professional misconduct on 29.08.2009. The appellant further contacted various lawyers and the lawyers were of the opinion that merely giving a notice to the earlier counsel for the serious breach committed by him was not sufficient for condonation of delay of a long span of five years. Appellant was further advised to follow the proper procedure and was

advised to file a complaint against the earlier counsel under section 35 of the Advocates Act, 1961 for professional misconduct. The appellant filed a complaint with the Bar Council of Delhi on 16.02.2009, copy of the notice issued to the earlier lawyer as also the complaint filed is stated to have been filed along with the paper book. It is submitted that the appellant thereafter handed over all the papers of the present appeal to the present counsel, but unfortunately, the father of the present counsel was suffering from Parkinson's disease and he fell down on 25.03.2009 and was admitted in Parmanand Hospital. The health of the father of the counsel further deteriorated and he was admitted to Vimhans Hospital and thereafter he unfortunately expired on 15.07.2009.

4. It is submitted that as the present counsel had to visit his village for various rituals and for discharging the responsibilities of his father, he could not pursue the present appeal and attend to other professional works. Counsel for the appellant has placed on record along with this application the discharge summary of his father from Parmanand Hospital and Vimhans Hospital, in support of his submission.
5. It is submitted by counsel for the appellant that the delay in re-filing has occurred not on account of any negligence or inaction on the part of the appellant, but only on account of the lapse on the part of the earlier lawyer. He also submits that the appellant should not be made to suffer on account of inaction of the counsel. In support of this contention, counsel for the

appellant has relied upon **Bank of India Vs. M/s.Mehta Brothers & Ors.** AIR 1991 DELHI 194, and more particularly paragraphs 25, 26 & 27, wherein a Single Judge of this Court had condoned the delay based on the judgments of the Supreme Court reported at AIR 1981 SC 1400 and also AIR 1987 SC 1353. Paragraph 25, 26 & 27 of the judgment reads as under:

“25. There can be no doubt that the conduct of the case by counsel for defendant No. 6 has been grossly negligent. If the decree passed stands as of today, it would be over Rs. 1.5 crores. The Code does not recognise any firm of lawyers to represent a party. Appearance in court has to be made or done by the party in person or by his recognised agent or by pleader appearing, applying or acting, as the case may be, on his behalf. A lawyer who is authorised to appear on behalf of the party has to file his vakalatnama in his favor in the court. No lawyer as a partner of J. B. Dadachanji and Company or this firm itself ever filed any power of attorney in its favour by the party. It would not, therefore, expect its name to appear in the daily cause list and no grievance can be made of that. As per practice on the Original Side of this Court dates are given in each case every day unless such case is in the category of 'Others' or 'Finals'. The present case was not in either of these two categories. No responsible person in the firm was looking after this case and it was left to be followed up by Court Clerk. No one in the firm appears to have ever checked the progress of the case when various dates were fixed either before the Deputy Registrar or in the Court. No proper diary of case file is shown to have been maintained. The affidavits filed in support of the plea are said to have been filed on the basis of the record, but what is that record, has not been explained. These affidavits, to my mind, are just value less. I do not find any sufficient cause at all explained by defendant No. 6 for its lawyers not to have appeared in court on the dates fixed. But then that is not the end of the matter. The law, as it stands today, is that the negligence of the lawyer appears to be irrelevant and if it is shown that the party has done everything possible for the conduct of the case by engaging a lawyer and giving him instructions, it cannot be denied justice on account of the negligence of its lawyer. Perhaps the law compounds the negligence of

the lawyer at the cost of the other party as well. In Rafiq v. Munshilal, AIR 1981 SC 1400 : (1981 All LJ 704), the Supreme Court was considering the question of restoration of appeal which had been dismissed in default on account of nonappearance of the lawyer of the party who applied for restoration of the same. The Supreme Court observed as under (at page 704 & 705; All LJ 1981 :-

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch-dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job."

The court further observed as under: -

If we reject this appeal, then the only one who would suffer would not be the lawyer who did not appear but the party whose interest be represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned Advocate absented deliberately or intentionally. We have no material for ascertaining that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."

26. In the present case, however, defendant No. 6 does not come from any rural area but certainly can be ignorant of court procedure though the suit was being tried on the original side, but then perhaps it was misled by its constituted attorney Crawford Bayley and Co. as

the constituted attorney took upon itself the conduct of the case.

27. In Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353, the Supreme Court observed that it had been making a justifiably liberal approach with reference to the expressions sufficient cause and held that this expression was adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice and that being the life-purpose for the existence of the institution of the Courts. The court laid down six principles of which I find the following principles to be relevant in this case (At page SC 1354; air 1987:-

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 case would be decided on merits after hearing the parties.

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.

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."

6. Counsel for the appellant in support of his plea that the length of delay is not relevant and has relied on **N. Balakrishnan Vs. M. Krishnamurthy** (1998) 7 SCC 123, and more particularly para 9 thereof, which reads as under:

"9. 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 uncondonable 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.”

7. Counsel for the appellant has also relied upon **State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Ors.** (2000) 9 SCC 94 and more particularly para 12 thereof:

“**12.** After referring to the various judgments reported in *New India Assurance Co. Ltd. v. Shanti Misra*, *Brij Indar Singh v. Kanshi Ram*³, *Shakuntala Devi Jain v. Kuntal Kumari*, *Concord of India Insurance Co. Ltd. v. Nirmala Devi*, *Lala Mata Din v. A. Narayanan*, *State of Kerala v. E.K. Kuriyipe*, *Milavi Devi v. Dina Nath*, *O.P. Kathpalia v. Lakhmira Singh*⁹, *Collector, Land Acquisition v. Katiji, Prabha v. Ram Parkash Kalra*, *G. Ramegowda, Major v. Special Land Acquisition Officer, Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India*, *Binod Bihari Singh v. Union of India*, *Shakambari & Co. v. Union of India*, *Ram Kishan v. U.P. SRTC* and *Warlu v. Gangotribai* this Court in *State of Haryana v. Chandra Mani* held: (SCC p. 138, para 11)

“11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court — be it by private party or the State — are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on

the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detention of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

8. Counsel for the appellant submits that the appellant has done everything possible for the conduct of the case inasmuch that the entire court fee in the sum of ₹6,834/- was handed over to the earlier counsel; and that the appellant has also signed the paper book and the same was filed within the period of

limitation. It is vehemently urged before this court that the appellant cannot be denied justice on account of the negligence on the part of his lawyer. It is contended that in the judgments sought to be relied upon it is held that while deciding an application under section 5 of the Limitation Act, the court must adopt a liberal approach in the matter.

9. Present application is vehemently opposed by counsel for the respondent. It is submitted that the appellant has very conveniently shifted the entire burden on the earlier counsel, whereas the appellant has been extremely negligent and callous in contesting and pursuing his matter. It is submitted that the appellant is not an illiterate villager, who is not aware of the court proceedings. On the contrary, the appellant is a private limited company and it is not expected from a private limited company, to be misled so easily by their own counsel that the appeal had been filed and would be listed only in due course. He further submits that not a single document has been placed on record to show that the appellant had ever written to the counsel to inform them about the progress of their case or the status of the matter. He further submits that even after 2008 when the appellant learnt about the inaction on the part of the earlier counsel, there is no satisfactory explanation for not removing the objections and having the appeal not listed between the period of 28.08.2008 to 21.12.2009 when finally all the defects were removed by the appellant. Counsel for the respondent also submits that the

medical record sought to be relied upon by counsel for the appellant would show that father of the counsel was unwell during the period March, 2009 to April, 2009 and thereafter unfortunately he expired in the month of July, 2009.

10. Admittedly, the objections could have been removed and the appeal could have been filed between the period 28.08.2008 and March, 2009 before the father became unwell. He further submits that even thereafter the father was discharged from the hospital in April, 2009, the appeal was not filed uptill July, 2009 when the father of the counsel had expired. Even after July 2009 an extremely long period had been taken to remove objections and to file the appeal. Counsel for the respondent has relied upon **Badri Bhagat Jhandewalan Temple Society Vs. Delhi Development Authority** reported at 2003 (106) DLT 503 in support of his plea that where negligence and conduct of party is of highest magnitude and writ large on the face of the record, party cannot take shelter behind negligence of advocate. Counsel for the respondent has relied upon paragraphs 20 and 21 of the judgment which read as under:

“20. In Gobind Parshad Jagdish Parshad v. Hari Shankar and Ors., 89 (2001) DLT 675, the Advocate stating that he failed to appear in the matter although it has been shown in the Regular list because his name was not mentioned, it was observed in “Advocate” name may not have been mentioned because he had not appeared in any of the hearings and had done little more than merely filing his Vakalatnama.” While commenting upon such defences, the court observed that “it has become epidemic for parties to caste blame on their lawyer”. In another case reported in 1999 All India High Court Cases 495 (Delhi), this court took the view that “non-appearance of the counsel in the case resulting in ex-parte decree cannot be made as excuse by the defendant. In case the defendant

was not pursuing the case bona fide or diligently, ex-parte decree cannot be set aside. The following observations made by this court are quote worthy:-

“By engaging a Counsel, a party to the case is not relieved of his duties and obligations in the matter. Where a party either does not brief the Counsel or keeps no contract with him, it is the party who is in default and negligent and shall have to bear consequences. The negligence of the Counsel cannot come to aid in an application under Order 9 Rule 13, CPC to establish sufficient cause for setting aside the ex-parte decree”.

21. Instant case is wholly on sticky wicket. Negligence of a lawyer in not appearing on one or two dates of hearing is understandable and aggrieved party can take advantage of such a negligence. But where the negligence and conduct of the party is of highest magnitude and is writ large, the party cannot take shelter behind its Advocate. If a party does not care to know about the status of its case or proceedings in the suit for years together when in the past hearings were fixed after a month, two month or so, such a party has to be shown the door and denied the discretion to set aside the ex parte proceedings or judgment passed against it. In this case the defendant did not try to know for five long years as to the status of the case. Defendant is having its office in the High Court Building itself. It has a staff and officers who maintain the record of each case and pursue on day to day basis. Senior Law Officers are there to monitor and regulate the status of cases. They maintain the record as to assignment of cases to their lawyers from time to time. Still there was non-participation in the proceedings for more than five years and the defendant wants this court to set aside the judgment. It militates against the judicial conscience.”

11. Counsel for the respondent has also relied upon

M.Subramania Mudaliar Vs. K. Janardhanam AIR 1994

MADRAS 102 wherein the Court did not condone the delay of six years. Para 9 of the judgment reads as under:

“9. In the circumstances, there is no valid explanation for the inordinate delay in representation. Even if the facts stated in the affidavit are true, they prove gross negligence and callous indifference on the part of the

appellant and his counsel. Even assuming that there is negligence only on the part of the counsel, it is not a valid ground for condoning such a long delay of six years in representation of the appeal. Hence, this petition for condonation of delay is dismissed.”

12. I have heard counsel for the parties and given my thoughtful consideration to the matter. As per volume 5 Rule 5 Chapter ‘1’ of Part A of the High Court Rules and Orders in case the objections are not removed by the appellant within 30 days it would amount to fresh filling of the appeal. In the case of **Asha Sharma & Ors. Vs. Sanimiya Vanijiya P. Ltd. & Ors.** 162 (2009) DLT 542 the Division Bench of this Court has held as under:

“8. The Rules of Delhi High Court in the matter of filing and scrutiny of appeals are contained in Volume V of High Court Rules and Orders. Rule 5 Chapter ‘1’, Part A prescribes as under:

5. *Amendment* -- The Deputy Registrar, Assistant Registrar, Incharge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order 41 Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Assistant Registrar, in charge of filing counter under Sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar, In-charge of the Filing Counter, under Sub-rule (1) it shall be

considered as fresh institution.

[Note: The provision contained in Rules 5(1), 5 (2) and 5 (3) shall mutatis mutandis apply to all matters, whether civil or criminal.]

The above referred Rule was substituted with effect from 1.12.1988 vide notification No.208/DHC/Rules dated 5.8.1988.

9. It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order XLI Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the registry, is filed after more than 30 days, it shall be considered as a fresh appeal, filed on the date on which it is presented after removal of the defects.”

13. In this case, the basic facts are not in dispute that the appeal was filed by the appellant assailing the judgment and decree of the trial court whereby the suit filed by the appellant herein was dismissed on 21.04.2003. The earlier counsel who was engaged in the matter, re-filed the appeal on 29.04.2003 and thereafter did not bother to remove the objections and the appeal was not listed for hearing from the year 2003 up till 28.08.2008 when the fresh counsel was engaged in the matter, filed his Vakalatnama. The appeal was taken back and re-filed on 26.09.2008 and again re-filed on 10.12.2009, 18.12.2009 and finally on 21.12.2009. The submissions of counsel for the appellant can be summarized as under:

- (i) The appellant should not be made to suffer on account of the inaction or negligence of his earlier counsel, who had misled the appellant that the appeal stood filed and would be listed only in due course.

- (ii) That the appellant has done everything possible for the conduct of the case inasmuch as paying the court fees, lawyer's fee and signing of the paper book. The Appellant has followed proper procedure and has also filed a complaint against the earlier counsel.
- (iii) The second counsel could not pursue the matter, after being engaged in the matter, on account of illness of his father, who was hospitalized in the month of March, 2009 and also in April, 2009.
- (iv) Unfortunately the father of the second counsel expired in July, 2009 and due to this reason the second counsel had to go to the village to sort out various responsibilities of his father. Thus he could not attend to his cases.

14. The submissions made by counsel for the respondent can be summarized as under:

- (i) The appellant is not an illiterate person but a private limited company and cannot be easily misled by their own counsel.
- (ii) The appellant has been extremely negligent in pursuing his own matter, hence, the appellant cannot be permitted to shift the entire burden on the counsel.
- (iii) Nothing has been placed on record by the appellant to show that the appellant ever enquired from the first counsel with regard to the status of the appeal.
- (iv) Even after the second counsel was engaged on 28.08.2008, the objections were removed and the appeal was lastly re-filed only on 21.12.2009 after a gap of more than one year.
- (v) The illness of the father of the second counsel would not come in the way of the counsel in removing the objections and re-filing the appeal as for the period 28.08.2008 to March, 2009 there is nothing on record to

show that counsel was prevented in removing the objections and re-filing the appeal.

15. I have heard counsel for the parties and perused the application and reply filed. It has been held by the Supreme Court in the case of ***Salil Dutta v. T.M. and M.C. Pvt. Ltd.***, reported at JT 1993 (4) SC 528, that:

“The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex- parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.”

16. In a recent decision rendered by the Supreme Court of India in ***Balwant Singh vs. Jagdish Singh & Ors.***, reported at 2010 (6) SCALE 749, while deciding an application under Order XXII Rule 9 CPC and Section 5 of the Limitation Act, it was held as under:

13. ... 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.*, [AIR1962 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;..."

17. The Supreme Court in the case of ***P.K.R. Ramachandran v. State of Kerala***, reported at (1997) 7 SCC 556, has held that an essential pre-requisite of exercising discretion to condone the delay is that the court must record its satisfaction that the explanation for delay was either reasonable or satisfactory.
18. The judgments relied upon by counsel for the appellant are not applicable to the facts of this case.
19. In the case **Rafiq Vs. Munshilal** reported at 1981 SC 1400, the Apex Court has dealt with the matter of a villager, who had entrusted the records of his case to a counsel and thereafter did not pursue the matter with him. The Apex Court was of the view that after engaging the lawyer, the party would be confident that the lawyer would look after his interest and the personal appearance of the party is not required nor it is of any

use. The appellant in that matter was under the hope that the lawyer would conduct the matter to the best of his ability and do his job. However, in this case, the appellant is a private limited company and the case of the appellant cannot be compared with an illiterate villager.

20. In the case **Collector, Land Acquisition, Anantnag Vs. Mst. Katiji**, reported at 1987 SC 1353, the Supreme Court has laid down various principles to show that in case the delay is not condoned, it would result in a meritorious matter being thrown out at the threshold and cause of justice being defeated; and also held that where substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. In the case **State of Bihar & Ors. (Supra)** the Apex Court has dealt with a matter with regard to condonation of delay where the applicant was the State. While considering the fact that the State is an applicant, praying for condonation of delay, the court observed that it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community; and in the ultimate analysis the sufferer is the public interest.
21. Both the aforesaid matters are not applicable to the facts of this case, as the appellant in this case has been highly negligent

and has shown callous indifference in pursuing his own matter. It cannot be believed that a private limited company which would have the benefit of trained staff, would not enquire from their counsel with regard to progress of the appeal. It can also not be believed that the appellant would not have issued a single communication to their counsel, demanding copy of the appeal, which was stated to have been filed. The approach of the appellant is completely dishonest and unreasonable and the court cannot come to the aid and rescue of such a litigant.

22. While dealing with an application for condonation of delay under Section 5 of the Limitation Act, the Court must bear in mind two important considerations. Firstly, the expiration of limitation for filing an appeal gives rise to a legal right to a decree-holder to treat the decree as binding between the parties and this right should not be lightly disturbed. Second, if sufficient cause is shown for condonation of delay, the delay should be condoned. It has been repeatedly held by the Supreme Court of India that the words “sufficient cause” should receive a liberal construction so as to advance substantial justice. In the same breath, it has been held that the discretion should be exercised. When there is no negligence or inaction nor want of bona fides imputable to the appellant the Court must be satisfied that there was due diligence on the part of the appellant.

23. In this case, I am not satisfied that the appellant has diligently pursued his own appeal. The appellant has not placed any

material on record to show that at any point of time the appellant had enquired from the earlier counsel with regard to the progress of the matter. The appellant cannot be permitted to shift the entire blame on his advocate. The appellant is a private limited company and not any rustic ignorant villager or any illiterate, who has no knowledge of legal proceedings and is capable of taking care of its commercial interest. Hence, I have no hesitation in holding that the appellant acted in an extremely callous and negligent manner in pursuing the appeal. Accordingly, no grounds are made out to condone the delay and the application is dismissed.

RFA 504/2009

24. In view of the order passed in the application, the appeal also stands dismissed.

October 28, 2010
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G.S. SISTANI, J.