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

+ **LA.APP. 270/2012**

HAWA SINGH

..... Appellant

Through: Mr. Manish Sehrawat, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sanjay Sahay, Advocate for
respondent No.1

Mr. Arun Birbal, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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09.11.2012

CM No.19004/2012 (u/S 151 CPC)

Allowed, subject to all just exceptions.

**W.P.(C) No. 7145/2012 & CM No. 19003/2012 (u/S 5 of Limitation
Act r/w Sec. 151 CPC)**

After 2025 days' of passing of the impugned judgment, accompanying appeal has been filed to seek enhancement of compensation in terms of decision in LA. APP No. 673/2008 '*Ved Prakash & ors. Vs. Union of India & anr.*' rendered on 26th May, 2008 (*Annexure-B*).

The parameters within which the discretion to condone the delay is to be exercised have been reiterated by the Apex Court in '*Lanka Venkateswarlu (D) by LRs Vs. State of A.P. & Ors.*' 2011 (III) AD

(SC) 237. It needs no reiteration that the concept of '*liberal approach*,
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By:AMULYA

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justice oriented approach, substantial justice' cannot be employed to jettison the substantive law of limitation, especially in cases where the Courts find that there is no justification for the delay occasioned and that while considering applications for condonation of delay, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in systematic manner, informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

Applicant/ appellant claims to be a senior citizen and a poor person, who has no *parokar*. However, accompanying affidavit of applicant/ appellant discloses his age to be of 58 years. As per applicant/ appellant, he is suffering from cancer of his right knee since the last four years and was operated upon and is said to be under treatment. Though it is stated in the application that the medical documents are appended thereto, but the application is not accompanied by any of the medical documents.

At the hearing, applicant's counsel had handed over copy of some medical documents to show that applicant had suffered fracture of upper end of tibia in December, 2009 and had obtained treatment from a private medical practitioner. Deen Dayal Upadhyay Hospital's Discharge Summary Sheet of April, 2010 reveals that applicant was admitted in hospital for two weeks for excision of tumor of his knee but the copy of medical record nowhere indicates that the said tumor was malignant i.e. to show that it was cancerous. The copy of medical record of applicant is of the period from December, 2009 till July, 2011.

Upon enquiry by the Court as to who was getting applicant treated in the hospital, it was disclosed by applicant's counsel that son of applicant, who was aged about twenty two years and was in private employment, was getting applicant treated from the hospital.

To say the least, plea of ailment of applicant is not only half baked but remains unsubstantiated. No reason is forthcoming as to why applicant could not get the appeal filed in time through his son. No explanation whatsoever is coming forth from the year 2007 till December, 2009. Lack of diligence is writ large on the face of it. It is aptly said that those who sleep over their rights, loose them. Here is a case which displays gross negligence. Delay howsoever long can be condoned only when sufficient cause is shown. Unless satisfactory or reasonable explanation for delay of more than five years is furnished, the delay cannot be condoned, in view of the pertinent observations made by the Apex Court in '**Balwant Singh (dead) Vs. Jagdish Singh & Ors.**' (2010) 8 SCC 685 wherein while refusing to condone the delay of 778 days, the Apex Court has declared that it is well settled canon of interpretive jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. That is to say, if a very liberal approach is adopted to interpret Section 5 of the Limitation Act, irrespective of the period of delay, it would amount to practically rendering this provision redundant. Such an approach or interpretation is impermissible in law.

When the instant application seeking condonation of delay of more than five years is considered in the light of afore-noted factual and legal position, I find that the reasons disclosed in the application does not sufficiently/ satisfactorily explain the inordinate delay occasioned.

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Consequentially, while refusing to condone the inordinate delay,
I dismiss the application and the accompanying appeal being time
barred.


(SUNIL GAUR)
JUDGE

NOVEMBER 09, 2012

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