

Court No. - 7**Case :-** WRIT - B No. - 24 of 2024**Petitioner :-** Ram Keval**Respondent :-** Deputy Director Of Consolidation,
Bahraich And Others**Counsel for Petitioner :-** Rama Kant Dixit, Ram Vishal
Tripathi**Counsel for Respondent :-** C.S.C., Vijayendra Prakash
Tripathi**Hon'ble Saurabh Lavania, J.**

Heard Sri Ram Vishal Tripathi, learned Counsel for the petitioner, Sri Vijayendra Prakash Tripathi, learned Counsel appearing for the Caveator and Sri Hemant Kumar Pandey, learned State Counsel.

In view of order proposed to be passed, issuance of notice to the private-respondent(s) is hereby dispensed with.

The present petition has been filed for the following main relief:-

"I. Issue a writ order or direction in the nature of CERTIORARI quashing thereby the impugned order dated 27/10 / 2023 passed by opposite party no.1 and also the order dated 12/7/2023 passed by the opposite party no. 2 by which the objection and revision filed by the petitioner has been rejected, as contained in Annexure No. 1 & 2 to this writ petition.

II. Issue a writ order or direction in the nature of MANDAMUS commanding the opposite parties may not create any hindrance in peaceful possession of the petitioner over the land in question."

By means of the present petition the petitioner has assailed the order dated 12.07.2023 passed by the opposite party no.2/Consolidation Officer-III, Sadar, District Bahraich in Case No. 202354081546030324 (Jawala Prasad Versus Ram Kewal, whereby the

opposite party no.2 has condoned the delay in filing the Objection under Section **9A(2) of U.P.Consolidation of Holdings Act, 1953** (in short 'Act of 1953'). The operative portion of the same reads as under:-

“उभय पक्ष के तर्क पूर्ण कथन को सुनकर तथा दिये गये तथ्यों व मियाद के प्रार्थनापत्र पर परीक्षण उपरान्त पाया गया कि वादी ज्वाला प्रसाद द्वारा दिया गया नामान्तरण हेतु आपत्ति दिनांक 26.09.2014 तथा मियाद प्रार्थनापत्र में आपत्ति का जो कारण दर्शाया गया है, वह चकबन्दी प्रक्रिया की जानकारी नहीं होने के आधार तथा समय से अनभिज्ञता का आधार लिया गया है। चकबन्दी प्रक्रिया में दाखिल वाद मियाद का प्रश्न लचीला होने का कई कारण बनता है, प्रकरण पर परीक्षण का तथ्य इंगित कर साक्ष्यों के आधारित अभिलेखों पर निर्णय का आधार समाप्त नहीं किया जाना भी प्रयाप्त कारण है, जिसके अनुसार बिलम्ब मर्षित किया जाना न्यायसंगत है। प्रश्नगत वाद में सम्बन्धित खाते पर प्रतिवादी पक्ष के विभाजन आदेश दिनांक 26.02.2016 को मियाद के बिन्दु पर बिलम्ब की छूट प्रदान की गयी है, जैसा की मूल पत्रावली संलग्न है। आदेश पत्रक अनुसार दिनांक 14.11.2017 के अनुसार श्रीमती चन्द्रकला द्वारा दिए गये बैनामें के निस्तारण के सम्बन्ध में वाद अभी भी न्यायालय सिविल जज बहराइच के न्यायालय में लम्बित होकर विचाराधीन है। इस कारण ज्वाला प्रसाद द्वारा प्रस्तुत मियाद बाहर आपत्ति को पोषणीय माना गया है। प्रकरण में प्रस्तुत माननीय सर्वोच्च/उच्च न्यायालय द्वारा दिये गये विधि व्यवस्थाओं के अनुसार सारवान न्याय के दृष्टिगत परिसीमा अधिनियम में मियाद के बिन्दु पर न्याय जहाँ लम्बित है, किसी प्रकार के अनुतोष से वंचित नहीं किया जा सकता है। ज्वाला प्रसाद का मियाद हेतु दिया गया प्रार्थनापत्र निरस्त करने का कोई प्रयाप्त कारण नहीं है, अतः मियाद का लाभ का छूट प्रदान किया जाता है। आपत्ति प्रार्थनापत्र रामकेवल पुत्र छोटे लाल दिनांक 20.09.2017/17.05.2017 तथा श्यामू आदि दिनांक 26.05.2022/06.06.2022 अन्य प्रार्थनापत्र बाबत वादी ज्वाला प्रसाद मियाद के बिन्दु पर तदनुसार निरस्त कर निस्तारित किया जाता है। दावा ज्वाला प्रसाद दिनांक 26.09.2014 पर आपत्ति रामकेवल पुत्र छोटे लाल दिनांक 20.09.2017/05.10.2017 प्रस्तुत है। अग्रेतर कार्यवाही: वादबिन्दु निर्धारण हेतु पत्रावली दिनांक 19.07.2023 को पेश हो। ”

A challenge has also been made to the order dated 27.10.2023 passed by the opposite party no.1/Deputy Director of Consolidation, Bahraich (in short 'DDC'), whereby the opposite party no.1 dismissed the two revisions i.e. Revision No. 0368/2023, Computerized Case No. 202354081500000368 (Shyam and Others Versus Jawala Prasad and Others) and Revision No. 0369/2023, Computerized Case No.

202354081500000369 (Ram Kewal Versus Jawala Prasad and Others) and up held the order of opposite party no.2 passed on 12.07.2023. The relevant portion of the order dated 27.10.2023 reads as under:-

"उपर्युक्त दोनों निगरानियों में पक्षकार एवं आराजी एक ही होने के कारण निस्तारण की सुविधा हेतु दोनों निगरानियां एकजार्ड की जाती है। नि० सं०:564/202354081500000368 श्यामू आदि बनाम ज्वालाप्रसाद आदि अग्रणी पत्रावली होगी।

उभयपक्षों के विद्वान अधिवक्तागण की बहस ग्राह्यता बिन्दु पर सुनी गयी। पक्षों द्वारा दाखिल लिखि बहस का अध्ययन किया गया। पत्रावलियों का अवलोकन किया गया। पत्रावली का अवलोकन किया गया। पत्रावली के अवलोकन से स्पष्ट है कि चकबन्दी अधिकारी द्वारा दिनांक 12-7-2023 को पक्षों को सुनकर पत्रावली में मियाद का लाभ दिया गया है। पत्रावली में चकबन्दी अधिकारी द्वारा गुण दोष पर अंतिम आदेश नहीं पारित किया गया है। निगरानीकर्तागण को परीक्षण न्यायालय में सुनवाई का अवसर प्राप्त है। मा० सर्वोच्च न्यायालय एवं मा० उच्च न्यायालय की अनेकों विधि व्यवस्थाये हैं कि वाद का निस्तारण गुण दोष पर किया जाय न कि तकनीकी आधार पर। मियाद के बिन्दु पर उदार दृष्टिकोण अपनाना चाहिए। ऐसी में चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक 12-7-2023 में किसी प्रकार के हस्तक्षेप की आवश्यकता प्रतीत नहीं होती है। दोनों निगरानियां ग्राह्यता बिन्दु पर निरस्त किये जाने योग्य हैं।"

Brief facts of the case are to the effect that Smt. Chandrakala w/o Sri Brij Lal and Sri Sanehi s/o Pyare, executed a registered sale deed on 23.06.1984 in favour of Jawala Prasad/opposite party no.3 and thereafter thereafter Smt. Chandrakala also executed a sale deed in favour of petitioner/Ram Kewal on 04.07.1998.

Smt. Chandrakala also instituted a suit for cancellation of registered sale deed dated 23.06.1984 i.e. Suit No. 217/1987 and this suit was decreed ex-parte on 13.08.1987 and thereafter on an application for restoration of final order dated 13.08.1987 was moved and the said restoration application was allowed and the judgment and order dated 13.08.1987 was recalled and the suit for cancellation of registered sale deed is pending before the competent court of jurisdiction till date and from the averments made in the present petition it is apparent that this fact has not been denied. The effect of pendency of the suit

would be that registered sale deed dated 23.06.1984 is still in-existence.

The opposite party no.3 on 24.09.2014 on coming to know about the fact that in the revenue records the name(s) Sanehi and Ram Keval (petitioner) have been shown, that he contacted an Advocate on 25.09.2014 and thereafter preferred an objection under Section 9A(2) of the Act of 1953 along with an application for condonation of delay on 26.09.2014.

The contents of the application for condonation of delay being relevant is extracted herein under :-

“निवेदन है कि प्रार्थी आपत्तिकर्ता ने आराजी नम्बरी गाटा सं० 293 रक्बा 1.493 हे० स्थित ग्राम बनकटा पर०-तह०, जि०-बहराइच को सनेही व चन्द्रकला के जरिये बैनामा लिया था तथा मौके पर काबिज व दाखिल है। आपत्तिकर्ता चकबन्दी प्रक्रिया से अनभिज्ञ है। दिनांक 24-9-014 चकबन्दी लेखपाल से सम्पर्क किया तो पता चला की खाते पर सनेही व रामकेवल का नाम दर्ज है तब वकील से दिनांक 25-9-14 को सम्पर्क किया और आज आपत्ति दाखिल कर रहा है। आपत्तिकर्ता ने जानबूझकर आपत्ति दाखिल करने में कोई गलती नहीं किया है बल्कि यह गलती न जानकारी बस हुई है, जो सहवन है तथा हस्व की दफा-5 भारतीय मियाद अधिनियम के तहत क्षमा के योग्य है। आपत्ति जानकारी की तिथि से अन्दर मियाद है।

अतः निवेदन है कि प्रा० पत्र स्वीकार करते हुए आपत्तिकर्ता को मियाद का लाभ प्रदान करते हुए आपत्ति का निस्तारण गुण दोष के आधार पर किये जाने की कृपा की जावे कृपा होगी।”

It is not in dispute that the objection under Section 9A(2) of the Act of 1953 was filed prior to publication of notification under Section 52 of the Act of 1953, which was published on 9.10.2018.

In response an objection dated 20.09.2017 was filed, which is extracted herein under:-

“निवेदन है कि प्रार्थना पत्र ज्वाला प्रसाद दिनांकित 26.9.14 बिल्कुल असत्य एवं मनगढ़न्त है, क्योंकि इसी आराजी से सम्बन्धित वाद देवीपाटन मण्डल गोण्डा में विचाराधीन था जिसमें ज्वाला प्रसाद ने ही आवेट किए जाने मुकदमा का दिया है और इन्हीं के प्रार्थना पत्र पर उक्त विचाराधीन वाद आवेट हुआ है तो ज्वाला प्रसाद का यह कहना कि ज्वाला प्रसाद चकबन्दी प्रक्रिया से पूर्णतया अनभिज्ञ है गलत है क्योंकि मुझमें चकबन्दी प्रक्रिया का देवीपाटन मण्डल गोण्डा के न्यायालय पर ज्ञान ज्वाला प्रसाद ने ही करवाया है तथा ज्वाला प्रसाद काफी चालाक व फितरती व्यक्ति है

तथा पढ़ा लिखा है तथा सही तथ्यों को छिपाने में काफी माहिर है तथा बनकटा में धारा-4 का प्रकाशन काफी पहले हो चुका है तथा ज्वाला प्रसाद ने अपने मियाद प्रार्थना पत्र में मियाद के विषय में पर्याप्त कारण नहीं दर्शाया है। अतएव प्रार्थना पत्र मियाद ज्वाला प्रसाद दिनांकित 18-9-14 निरस्त किया जाना आवश्यक है। ग्राम में धारा 4 का प्रकाशन 2013 में ही हो चुका है।

अतः श्रीमान जी से अनुरोध है कि प्रार्थना पत्र / आपत्ति प्रार्थी स्वीकार करके मियाद प्रार्थना पत्र दिनांकित 18.9.14 प्रस्तुत द्वारा ज्वाला प्रसाद निरस्त किये जाने की कृपा की जावे। कृपा होगी।”

It is apparent from the objection dated 20.09.2017, quoted above, that it is completely vague as in the same to establish the facts that opposite party no. 3 was having knowledge of the consolidation proceedings related to Gata in issue i.e Gata no. 293/1.493 Hectare, the details of the case, which was pending before Commissioner, Devi Patan Mandal, Gonda, have not been indicated.

Assailing the impugned orders dated 12.07.2023 and 27.10.2023, the learned Counsel for the petitioners stated that the delay for the period of about five years was not properly explained despite the same the opposite party no.2 condoned the delay vide order dated 12.07.2023 and DDC without taking note of the fact that delay of about five years, was not properly explained, affirmed the order of opposite party no.2 vide order dated 27.10.2023. As such the indulgence of this Court is required. In support of his contention he has placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Ajay Dabra Versus Pyare Lal and others** reported in **2023 SCC OnLine SC 92**, relevant paragraphs of which read as under:-

"12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela v. Financial Commissioner, Revenue, Punjab, Chandigarh (1977)4 SCC 69 has held:

"21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right

which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

13. This Court in the case of Basawaraj v. Special Land Acquisition Officer (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

Opposing the present petition learned Counsel for the side opposite stated that in the facts and circumstances of the case particularly that earlier registered sale deed dated 23.06.1984 has not been cancelled till date and in view of this fact and the law settled in this regard that earlier sale deed would prevail over the later sale deed, the opposite party no.3/Jawala Prasad possess rights over the property in issue and as such the opportunity of hearing to contest the case on merit is required else the opposite party no.3 would suffer irreparable loss and injury.

It is also stated that while dealing with the issue of condonation of delay, a liberal approach should be taken by the competent authority/court and in the instant case the opposite party no.3, was not heard before the authority and his right would be affected if the opportunity of hearing is denied because his right over the property in issue is based on the registered sale deed executed by Chandrakala and Smt. Sanahi dated 23.06.1984 and the claim of the petitioner is based upon the subsequent sale deed dated 04.07.1998 executed by Smt. Chandrakala.

He also submitted its proper explanation was given to condone the delay, which was not replied in specific terms and taken note of entire aspect of the case, the delay was condoned vide order dated 12.07.2023 affirmed vide order dated 27.10.2023. As such, no interference is required in the matter.

On the issue of condonation of delay he referred the paragraphs no. 15 and 16 of judgment passed by the Hon'ble Apex Court in the case of **Bhivchandra Shankar More v. Balu Gangaram More** reported in (2019) 6 SCC 387, which reads as under:-

“15. It is a fairly well-settled law that “sufficient cause” should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under:

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.”

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N.Balakrishnan v. M.Krishnamurthy [N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123], this Court held as under:-

“11. 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.....”

Considered the submissions advanced by learned Counsel for the parties and perused the records.

The law on the issue of dealing with the applications for condonation of delay is well settled. This Court as also Hon'ble Apex Court in various judgments have held that an opportunity of hearing should be given and the hearing should not be shut down and in the said judgments, it is also settled that liberal,

pragmatic, justice oriented and non pedantic approach should be taken by the Courts concerned while dealing with the applications for condonation of delay so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned. The Courts concerned while dealing with such applications should also consider the fact that whether the delay has sufficiently been explained or not. The manner of exercising discretion in matters relating to condonation of delay is fairly well settled and it has been consistently held that while exercising discretion in such matters, the words "sufficient cause" under Section 5 of The Limitation Act, 1963, should be construed in a liberal manner and in the absence of anything showing malafide or deliberate delay as dilatory tactics, the Court should normally condone the delay. It is also settled principle of law that the discretion if exercised by the Courts concerned then the Appellate Courts should not interfere in the discretion exercised by the Courts concerned, if the discretion so exercised has been exercised judicially and not arbitrarily.

The Hon'ble Apex Court in the case of ***Ramji Dass and others v. Mohan Singh, 1978 ARC 496*** has held that as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. In that case the appeal was filed against an ex-parte decree after eight years and the District Court as well as the High Court had rejected the matter on the ground of delay. However, setting aside the order of the High Court, Hon'ble Apex Court observed as under:

"... we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interest of Justice which always informs the power under S. 115 C.P.C. ..."

The manner of exercising discretion by Courts in matters relating to condonation of delay was subject matter of consideration in the case of ***N. Balakrishnan Vs. M.***

Krishnamurthy; (1998) 7 SCC 123, wherein Hon'ble Apex Court observed 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.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. 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.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575 and State of W.B. v. Administrator, Howrah Municipality, (1972) 1 SCC 366 ."

In the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nefar Academy and others reported in (2013) 12 SCC 649***, the issue before the Apex Court was that whether the High Court rightly condoned the delay of 2449 days in challenging the interim order dated 25.02.2004, which was duly communicated to the authorities and even for compliance of the same, the District Inspector of Schools, Howrah on 24.01.2006, directed the school authorities to comply with the directions issued vide order dated 25.02.2004. The Apex Court after considering the earlier judgments allowed the appeal and set aside the order of the High Court, condoning the delay. In the case of ***Esha Bhattacharjee (supra)***, the Apex Court in para 21 of the judgment culled out the principles on the issue of condoning the delay, which are as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (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.

21.2. (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.

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

21.4. (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.*

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

21.6. (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.*

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

21.8. (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.*

21.9. (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.*

21.10. (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.*

21.11. (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.*

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

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

In the case of ***Brijesh Kumar and others v. State of Haryana and others reported in (2014) 11 SCC 351***, the Hon'ble Apex Court observed as under:-

"6. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained everyday by the courts. The law of limitation is enshrined in the legal maxim interest reipublicae ut 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, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. The Privy Council in General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim [(1939-40) 67 IA 416 : (1941) 53 LW 212 : AIR 1941 PC 6] , relied upon the writings of Mr Mitra in Tagore Law Lectures, 1932 wherein it has been said that:

A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.

8. In P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556 : AIR 1998 SC 2276] , the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:

"6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds."

9. While considering a similar issue, this Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy [(2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450] laid down various principles inter alia: (SCC pp. 658-59, paras 21-22)

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

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

21.9. (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.

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

10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone."

Needless to say that this petition has been filed challenging the order dated 12.07.2023, whereby, the C.O. exercised its discretionary jurisdiction and condoned the delay in filing the objection so as to advance substantial justice and the order dated 27.10.2023, whereby the D.D.C. has affirmed the order dated 12.07.2023, as such, the scope of interference by this Court is limited.

It is only where, therefore, there is complete non-application of mind in condoning delay which is inexorable,

or where no reasons for condonation of delay are forthcoming in the order passed by the court below, this Court would ordinarily interfere.

On the scope of interference with discretionary orders even in appeal, the Hon'ble Supreme Court holds thus, in ***Wander v. Antox India Pvt. Ltd.*; 1990 Supp SCC 727**:

"13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

*14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721).*

*"... These principles are well established, but as has been observed by Viscount Simon in *Charles**

Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

Interfering with an order of condoning the delay, the Hon'ble Supreme Court in ***Mohammad Shafeeq v. Mirza Mohammad Husain; (2002) 9 SCC 460***; observed as under:-

"3. In our opinion, the High Court has taken too technical a view of the error committed by the appellant in pursuing the remedy available to him under the law. The appellant had been prosecuting his remedy diligently and there is nothing to doubt his bona fides. These aspects were taken into consideration by the learned Additional District Judge while condoning the delay in filing the revision. In our opinion, the High Court ought not to have interfered with the order of the Additional District Judge, condoning the delay in filing the revision, being an order passed in exercise of discretion vested in the learned Additional District Judge and for that reason, was not open to interference by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution."

It would be apt to indicate the principles related to execution and registration of sale deed.

(a) The earlier sale deed would prevail over the subsequent sale deed. The transferor/vendor cannot prejudice the rights of the transferee/vendee by any subsequent dealing with the property. This proposition is expressed in the equitable maxim "qui prior est tempore potior est jure". This means that "the first in time prevails over the others" and in other words "he who is earlier in time is stronger in law". It would also be apt to indicate the principle "nemo dat quod non habet" which means "no one can give what they do not have" in other words "no man convey a title than what he has". When a man in possession a property has created an

interest in favour of someone, he cannot later deviate from it and create another interest without being free from previous transfer. If there are successive transfers of the same property, the later transfer is subject to the prior transfer.

(b) Section 48 of the Transfer of Property Act, 1882 embodies this principle in legislation. Section 48 is founded upon the above said principle(s) including that no man can convey a title than what he has. If a person has already affected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. Section 48 is an absolute in its terms. It determines the priority when there are succeeding transfers. It says that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their fullest extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

(c) The Hon'ble Apex Court in the case of ***S. Kumar v. S. Ramalingam***, (2020) 16 SCC 553, observed as under:-

"14. Section 48 of the Transfer of Property Act, 1882, relied upon by the learned counsel for the appellants, reads thus:

"48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."

The said provision contemplates that where a person i.e. Rajasekaran has created different rights in or over the same property i.e. 16 ft wide strip of land and such rights cannot be exercised to their full extent together, then each later created right shall be subject to the rights previously created. The exception is if special contract or reservation binding the earlier transferee is executed. It will mean that the exclusive right conferred on the plaintiff in the sale deed dated 31-5-1988 will not be legal till such time the earlier transferee i.e. Defendant 2 has a

special contract or reservation which binds her. Since the right of access to Defendant 2 was reserved in the sale deed dated 1-4-1976, therefore, the vendor could not confer exclusive right to the plaintiff vide sale deed dated 31-5-1988.

15. The plaintiff has to maintain the 16 ft wide passage in any case in terms of the recital in his sale deed dated 31-5-1988. Therefore, if Defendant 2 or her transferees use the passage, then such use of passage by Defendant 2 or her transferees cannot be said to be causing any prejudice to the plaintiff."

(d) With regard to the issue of date of registration of sale-deed reference can be made to the judgment passed in the case of ***Kanwar Raj Singh (D) Th. Lrs. Versus Gejo. (D) Th. Lrs and Others; 2024 SCC OnLine SC 1***, wherein after considering the decision of the Constitution Bench in the case of ***Ram Saran Lall v. Domini Kuer; 1961 SCC OnLine SC 133***, the Hon'ble Apex Court observed as under:-

"5. The High Court, in the impugned judgment, has relied upon Section 47 of The [Registration Act, 1908](#) (the Registration Act), which reads thus:

"47. Time from which registered document operates.
—A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

6. On plain reading of Section 47, it provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof was required. Thus, when a compulsorily registerable document is registered according to the Registration Act, it can operate from a date before the date of its registration. The date of the operation will depend on the nature of the transaction. If, in a given case, a sale deed is executed and the entire agreed consideration is paid on or before execution of the sale deed, after it is registered, it will operate from the date of its execution. The reason is that if its registration was not required, it would have operated from the date of its execution.

7. Now, we come to the decision of the Constitution Bench in the case of Ram Saran Lall (Supra). In

paragraph 8 of the judgment, the Constitution Bench held thus:

*“8. We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the instrument is correct. Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date. Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. The view that we have taken of Section 47 of the Registration Act seems to have been taken in *Tilakdhari Singh v. Gour Narain* [[AIR 1921 Pat 150](#)]. We believe that the same view was expressed in *Nareshchandra Datta v. Gireeshchandra Das* [[ILR \(1935\) 62 Cal 979](#)] and *Gobardhan Bar v. Guna Dhar Bar* [[ILR \(1940\) 2 Cal 270](#)].”*

8. The Constitution Bench held that Section 47 of the Registration Act does not deal with the issue when the sale is complete. The Constitution Bench held that Section 47 applies to a document only after it has been registered, and it has nothing to do with the completion of the sale when the instrument is one of sale. It was also held that once a document is registered, it will operate from an earlier date, as provided in Section 47 of the Registration Act.

9. Section 54 of the Transfer of Property Act, 1984 (the Transfer of Property Act) reads thus:

“54. “Sale” defined.—*“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made.—*Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”

10. Every sale deed in respect of property worth more than Rs. 100/- is compulsorily registerable under Section 54 of the Transfer of Property Act. Thus, a sale deed executed by the vendor becomes an instrument of sale only after it is registered. The decision of the Constitution Bench only deals with the question of when the sale is complete; it does not deal with the issue of the date from which the sale deed would operate. Section 47 of the Registration Act does not deal with the completion of the sale; it only lays down the time from which a registered document would operate.

11. Now, coming to the facts of this case, the consideration was entirely paid on the date of the execution of the sale deed. The sale deed was registered with the interpolation made about the description/area of the property sold. The first defendant admittedly made the said interpolation after it was executed but before it was registered. In terms of Section 47 of the Registration Act, a registered sale deed where entire consideration is paid would operate from the date of its execution. Thus, the sale deed as originally executed will operate. The corrections unilaterally made by the first defendant after the execution of the sale deed without the knowledge and consent of the purchaser will have to be ignored. Only if such changes would have been made with the consent of the original

plaintiff, the same could relate back to the date of the execution. It is not even the first defendant's case that the subsequent correction or interpolation was made before its registration with the consent of the original plaintiff. Therefore, in this case, what will operate is the sale deed as it existed when it was executed."

Now, reverting to the facts of the case. Undisputed the registered sale deed dated 23.06.1984 in favour of opposite party no. 3/Jawala Prasad is still in-existence as has not been set aside till date and the claim of the petitioner is based upon the subsequent sale deed dated 04.07.1998. The suit regarding cancellation of sale deed is still pending before the trial court.

Further, the denial to explanation given in the application for condonation of delay for the purposes of condoning the delay including the date of knowledge of the entry in revenue records and also the knowledge of consolidation proceedings is completely vague as in the objection the details of case, basis of denial, have not been indicated.

Having considered the facts of the case, indicated above, particularly the facts related to two sale deeds and the principles related in this aspect and the facts that the explanation given in the application for condonation of delay has not been refuted in specific terms by giving details of the case, the basis of objection, and the law on the issue of condonation of delay including the law regarding interference by the higher court in the order condoning the delay, this Court feels that the matter is liable to be decided on merits and Consolidation Officer, Bahraich has rightly exercised its power and condoned the delay and the observations made in the impugned orders are just and proper and being so no interference is required in the impugned order dated 12.07.2023 passed by Consolidation Officer, Bahraich and order dated 27.10.2023 passed by Deputy Director of Consolidation, Bahraich.

For the reasons aforesaid, the present petition is liable to be dismissed. It is ***dismissed*** accordingly. Cost made easy.

Order Date :- 10.1.2024

Jyoti/-