



2025:UHC:1460

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Appeal No. 170 of 2024

12 February, 2025

Vipin Kumar Mehrotra Appellant
Versus

Arun Kumar Mehrotra Respondent

Presence:-

Ms. Abhilasha Tomar, learned counsel for the appellant.
No representation for the respondent.

Dated : 12.02.2025

Hon'ble Vivek Bharti Sharma, J.

This second appeal is filed by the appellants against the judgment and decree dated 22.11.2016 passed by the learned Additional District Judge, Ramnagar, District Nainital in Civil Appeal No. 10 of 2016, whereby the appeal preferred against the judgment and decree dated 04.02.2016 passed by learned Civil Judge (Junior Division), Ramnagar in Original Suit No. 60 of 2014 has been dismissed.

2. **Heard on Delay Condonation Application IA No.01/2024**

3. As per the report of Registry, there is a delay of 2868 days in filing the present appeal, therefore, a delay condonation application is filed by the appellant/applicant to condone the delay in filing the present second appeal. In the delay condonation application, the ground stated for delay is that the father of the present appellant/applicant died in the year 2005; that, the father of the appellant had executed a Will on 02.01.2004, whereby the properties were distributed



amongst the brothers and sister; that, in respect to the share of the property given to the appellant by Will dated 02.01.2004, a dispute arose giving rise to litigation, which was decided against the appellant; that, several times the appellant requested respondent for amicable settlement but no step was taken by the respondents to resolve the dispute; that, thereafter, the appellant/applicant consulted lawyers and finally decided that the judgment and order dated 22.11.2016 and judgment and decree dated 04.02.2016 must be challenged before this Court; that, the appeal was filed on 27.12.2024.

4. Learned counsel for the appellant/applicant would submit that it is settled law that the court should adopt liberal approach in condoning the delay and should not go into technicalities.

5. In view of the submissions made above, this Court perused the record.

6. Perusal of the reasons given in the affidavit in support of the delay condonation application would reveal that no satisfactory or reasonable explanation constituting sufficient cause is given for condoning the inordinate delay. Hon'ble Supreme Court in catena of judgments has held that only if the reasons are genuine and acceptable, then alone, huge delay, is to be condoned and not otherwise. The application for condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period. It is well considered principle of law that while condoning the delay, the Courts have to consider the genuinity of the reasons furnished by the person seeking condonation of delay. This view is fortified by the following judgments of Hon'ble Supreme Court.



In ***Esha Bhattacharjee vs. Raghunathpur Nafar Academy (2013) 12 SCC 649***, Hon'ble Supreme Court after considering the extensive case law on the point of condonation of delay, has culled out the principles which need to be followed while condoning the delay. The said principles evolved by the Hon'ble Supreme Court read as under:

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

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 encapsulate 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.

7. In ***Brijesh Kumar and others vs State of Haryana and others, (2014) 11 SCC 351***, Hon'ble Apex Court relying upon the previous judgment of *Esha Bhattacharjee (supra)* has laid down the various principles with respect to condonation of delay in paragraph 10 of said judgment, which reads as under:

"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."

8. In ***Pathapati Subba Reddy (died) by L.Rs. and Others Vs. Special Deputy Collector (LA) 2024 SCC Online SC 513***, the Hon'ble Apex Court had observed that the courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if



sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence.

9. The applicant/appellant has not said that he was unaware of the impugned judgment. The only plea is that he was requesting his brother i.e. respondent for amicable settlement. It is surprising that when litigation had culminated into finality against the applicant/appellant, then what was the point for making request for settlement. This is fanciful rather appears to be concoction. It would not be in the interest of justice to expose respondent to face unnecessary litigation by condoning inordinate delay on flimsy and fanciful grounds.

10. In view of the above, this Court is of the firm opinion that the applicant/appellant has failed to establish cogent and sufficient reasons to condone such a huge delay, therefore, delay in filing the present appeal cannot be condoned.

11. For the reasons recorded above, delay condonation application is dismissed. Consequently, the second appeal stands dismissed, as being time barred.

(Vivek Bharti Sharma, J.)

12.02.2025

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2025:UHC:1460