

**HIGH COURT OF UTTARAKHAND AT NAINITAL****HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI****Writ Petition Misc. Single No. 2134 of 2016****17 August, 2026**

Kalam Singh

--Petitioner

Versus

Shambhu Singh

--Respondent

Presence:-

There is no representation for the parties.

JUDGMENT

1. Suit filed by petitioner was dismissed for default under Order 9 Rule 8 CPC. Petitioner filed an application for restoration of the suit with application seeking condonation of delay. The delay condonation application was rejected, vide order dated 08.03.2016 by holding that cause shown for delay is not sufficient. Petitioner filed revision challenging Trial Court's order dated 08.03.2016. Learned District Judge, Uttarkashi dismissed the said revision, vide judgment dated 04.07.2016. Thus, feeling aggrieved, petitioner has approached this Court challenging the order dated 08.03.2016 and judgment dated 04.07.2016.



2. This Court is not inclined to interfere with the reasoned orders passed by learned Courts below. Trial Courts order reveals that on the date when the suit was dismissed for non-prosecution i.e. 03.06.2015, petitioner's son/ power of attorney holder was present in the Court complex in connection with some other case and the civil suit filed by petitioner was being pursued by the same son. Learned Trial Court held that plea of old age and illness taken by petitioner is not believable. Learned District Judge, after considering the matter in detail, dismissed the revision filed by petitioner. Both the learned Courts below have noticed that petitioner was negligent and neither he nor his counsel was appearing before the Trial Court.

3. Since both the Courts below have exercised their discretion in a judicious manner, therefore, any interference with the order passed by Trial Court as affirmed by Revisional Court under Article 227 would not be warranted. Hon'ble Supreme Court in the case of *Pathapati Subba Reddy v. Collector (LA)*, reported as (2024) 12 SCC 336 has considered and discussed the aspects, which have to be borne in mind while considering an application under Section 5 of Limitation Act. Paragraph nos. 18 to 28.8 of the said judgment are reproduced below:-

"18. In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107, this Court in advocating the liberal approach in condoning the delay for "sufficient cause" held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may



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result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of “sufficient cause” for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases “liberal approach”, “justice-oriented approach” and cause for the advancement of “substantial justice” cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and reopened by taking aid of Section 5 of the Limitation Act.

19. *It must always be borne in mind that while construing “sufficient cause” in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.*

20. *This Court as far back in 1962 in Ramlal v. Rewa Coalfields Ltd has emphasised that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a “sufficient cause” for various reasons, may refuse to condone the delay depending upon the bona fides of the party.*

21. *In Maqbul Ahmad v. Pratap Narain Singh, it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.*

22. *In this connection, a reference may be made to Brijesh Kumar v. State of Haryana [Brijesh Kumar v. State of Haryana, wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.*

23. *In Lanka Venkateswarlu v. State of A.P., where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. The High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as “liberal approach”, “justice-oriented*



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approach” and “substantial justice” cannot be employed to jettison the substantial law of limitation.

24. *It has also been settled vide State of Jharkhand v. Ashok Kumar Chokhani, that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.*

25. *In Basawaraj v. LAO, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression “sufficient cause” as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.*

26. *It would be beneficial to quote para 12 of the aforesaid decision in Basawaraj case which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Para 12 reads as under: (SCC pp. 86-87)*

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. ‘A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.’ The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”

27. *This Court in the same breath in the same very decision vide para 15 went on to observe as under*

“15. The law on the issue can be summarised 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



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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.”

(emphasis supplied)

28. *On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

28.1. *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*

28.2. *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*

28.3. *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*

28.4. *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

28.5. *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;*

28.6. *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

28.7. *Merits of the case are not required to be considered in condoning the delay; and*

28.8. *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

4. For the aforesaid reasons, the writ petition fails and is dismissed.

(Manoj Kumar Tiwari, J.)

17 August, 2026

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