

**HIGH COURT OF TRIPURA
AGARTALA**

**CM APPL 549 OF 2014
IN
LA APP.39 OF 2014**

- 1. Shri Bikash Saha,**
Son of Late Abani Mohan Saha,
Resident of Arabindapalli,
Town-Amarpur, P.S. Birganj,
P.O. Amarpur, District-Gomati, Tripura.
- 2. Shri Subhash Saha,**
Son of Late Abani Mohan Saha,
Resident of Arabindapalli,
Town-Amarpur,
P.S. Birganj, P.O. Amarpur,
District-Gomati, Tripura-799 101.
- 3. Shri Uttam Saha,**
Son of Late Abani Mohan Saha,
Resident of Arabindapalli,
Town-Amarpur,
P.S. Birganj, P.O. Amarpur,
District-Gomati, Tripura-799 101.
- 4. Smt. Anjana Saha,**
Wife of Late Manik Lal Saha,
Resident of Bhati Ahoyanagar,
P.O. Abhoynagar,
P.S. West Agartala,
District-West Tripura, Tripura-799 006.
- 5. Smti. Rikta Saha,**
Wife of Late Bhabatosh Saha,
Resident of –Town-Amarpur, P.S. Birganj,
District-Gomati, Tripura-799 101.
- 6. Smti. Silpashree Saha,**
Daughter of Late Bhabatosh Saha,
Resident of-Town-Amarpur, P.S. Birganj,
District-Gomati, Tripura-799 101.
- 7. Smti. Archana Roy,**
Wife of Late Promothos Roy,
Resident of Shankar Palli,
Town-Amarpur, P.O. Amarpur,
District-Gomati, Tripura-799 101.

8. Smti. Anjanta Saha,

Wife of Shri Bholanath Saha,
Resident of No.2 Fulkumari,
P.O. Udaipur, P.S. Radhakishorepur,
District-Gomati, Tripura- 799 116.

9. Shri Arabinda Saha,

Son of Late Abani Mohan Saha,
Resident of Arabindapalli,
Town-Amarpur, P.S. Birganj,
P.O. Amarpur, District-Gomati,
Tripura-799 101.

10. Shri Rati Ranjan Saha,

Son of Late Abani Mohan Saha,
Resident of Arabindapalli,
Town-Amarpur, P.S. Birganj,
P.O. Amarpur, District-Gomati,
Tripura-799 101.

...Petitioners.

- Versus -

1. The Land Acquisition Collector,

South Tripura, P.O. Udaipur, Gomati,
Tripura- 799 116.

2. The Executive Engineer,

Public Works Department,
Amarpur Division, South Tripura.

..... Respondents.**3. Dr. Satabdi Saha,**

D/o Late Bhabatosh Saha,
Permanent resident of -Town-Amarpur,
P.S. Birganj, District-Gomati,
Tripura-799 101.

Presently residing at :

Room No.396, Triveni Block,
M/M Ramiah Medical College,
Bangalore, Karnataka -560 054.

..... Pro-forma Respondent.

BEFORE
THE HON'BLE MR.JUSTICE S.C. DAS

For the Petitioners : Ms. P. Dhar, Advocate.

For the Respondent-O.P. : Mr. S. Roy, Advocate.
No.2

For the other : None.
respondents-O.P.

Date of hearing & : **01.10.2015.**
delivery of judgment
and Order.

Whether fit for reporting : **YES**

JUDGMENT & ORDER (ORAL)

This is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 450 days in preferring connected L.A. Appeal No.39 of 2014 challenging the judgment and Nil award dated 19.01.2013 passed by learned L.A. Judge, South Tripura, Udaipur, in Case No. Misc. (LA) 26 of 2010.

2. Heard learned counsel Ms. P. Dhar for the petitioners and learned counsel Mr. S. Roy for the respondent No.2.

Other respondents have chosen to remain absent.

3. The petitioners, *inter alia*, contended that L.A. Collector, South Tripura, acquired 0.36 acres of land belonged to the petitioners for construction of approach road to RCC Bridge over river 'Gomati' and awarded

compensation @ Rs.2,00,000/- per kani of the acquired land. The petitioners received the compensation under protest and made prayer for reference under Section 18 of the L.A. Act and accordingly the L.A. Collector referred the case of the petitioners to the Court of learned L.A. Judge (District Judge), Udaipur which was registered as Misc.(LA) 26 of 2010. By judgment dated 19.01.2013 the learned L.A. Judge disposed the case without enhancing the compensation. It is submitted by the petitioners that though they were dissatisfied with the judgment and Nil award dated 19.01.2013 but because of their lack of unanimity and because of the cost involved to file an appeal, the petitioners chose to abstain from filing an appeal initially till the time they were in agreement for filing such an appeal. It is further contended by the petitioners that an adjacent plot of land was also acquired for which a reference was made which was registered as Misc.(LA) 22 of 2010 and by judgment passed in that case the compensation was awarded by the L.A. Judge @ Rs. 20,00,000/- per kani and when the petitioners came to know about such enhancement of compensation, they approached the learned counsel and the learned counsel advised them to prefer appeal and thereafter the petitioners preferred the appeal with the present application for condonation of delay of 450 days.

4. Respondent No.2 by filing a written objection contended that the delay in filing the appeal has not been explained with sufficient reason and therefore, the delay cannot be condoned.

5. It is emphatically submitted by learned counsel Ms. P. Dhar for the petitioners that the petitioners stated the true fact that for the lack of unanimity amongst the petitioners regarding the virtues of filing an appeal and the cost of filing such an appeal the petitioners chose to abstain from filing an appeal till they were in agreement in filing the appeal. She has further submitted that for acquisition of adjacent plot of land compensation was awarded @ Rs.20,00,000/- per kani in another case by the learned L.A. Judge and so, the petitioners have a meritorious case for consideration and so the delay may be condoned.

6. In support of her contention she has referred the case of ***Manoharan v. Sivarajan & Ors., reported in (2014) 4 SCC 163*** and the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in 2013 AIR SCW 6158.***

7. On the other hand, Mr. Roy, learned counsel for the respondent-O.P.No.2 has submitted that the statement of the petitioners itself shows that they were aware of the

judgment dated 19.01.2013 passed by the learned L.A. Judge in their reference case No. Misc. (LA) 26 of 2010 and initially they chose to abstain from filing an appeal but later on they came to agreement for filing an appeal. Such conduct of the petitioners clearly exposes their negligence in filing an appeal. If they were negligent in filing an appeal in time, the delay cannot be condoned. He has further submitted that according to the petitioners they were encouraged to file the appeal when they found that in another case compensation at a higher rate was allowed and that cannot be a ground to condone the delay in their case.

8. In support of his contention he has referred the case of ***Brijesh Kumar & Ors V. State of Haryana & Ors.***, reported in ***(2014) 11 SCC 351*** and the case of ***Basawaraj & Anr. V. The Spl. Land Acquisition Officer***, reported in ***AIR 2014 SC 746***.

9. The word '*limitation*' in its legal and popular sense, refers to the time within which an action may be brought, or some act done, to preserve a right. In its ordinary sense, it means restriction or circumspection. Time is the essence of life. By lapse of time, one acquires a right and at the same time, a right extinguishes due to lapse of time. One is expected to do a particular act or thing in time

either fixed by law or by nature. Where the law has prescribed a time limit to take certain action within a certain specified period of time, it has to be taken, by a party desirous to take action, within such specified period, failing which the party will lose his right to take action subject to any exception prescribed by the statute. The utility of a statute of limitation has never been a matter of doubt or dispute. It has been said that the statute of limitation is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands, and quiets title. In the words of John Voet, controversies are restricted to a fixed period of time lest they should become immortal while men are mortal. It secures peace as it ensures security of rights; and it secures justice, as by lapse of time evidence in support of rights may be destroyed. There can thus be no doubt that it rests on sound public policy. The operation of the law of prescription has been explained by *Lord Plunket* in a striking metaphor. He stated that *Time holds in one hand a scythe and in the other, an hour glass. The scythe mows down the evidence of our rights, while the hour glass measures the period which renders that evidence superficial. Commenting on this, a learned author observes that the metaphor could have been completed by adding, so far as India is concerned, that a framework of the hour-glass,*

would certainly decay, the glass to be broken, and send escape.

The Supreme Court in the case of **N. Balakrishnan v. M. Krishnamurthy**, [(1998) 7 SCC 123] has held—*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. 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 is thus founded on public policy. It is enshrined in the 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. 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.*

10. To explain “sufficient cause” with a view to avail the benefit of Section 5 of the Limitation Act, the petitioners assigned reasons in Para 4, 5 and 6 of their petition which read as follows:-

“4. That, the Petitioners most humbly beg to submit that, despite being dissatisfied with the judgment dated 19.01.2013, there being a lack of unanimity amongst the Petitioners regarding the virtues of filing an appeal and the costs of filing such an appeal the Petitioners chose to abstain from filing an appeal till all the Petitioners were in agreement in filing the appeal.

5. That, the Petitioners most respectfully beg to state that by judgment dated 30.04.2013, the Learned Land Acquisition Judge, South Tripura, Udaipur In Misc (LA) 26 of 2010 enhanced the award of the Land Acquisition Collector of the adjacent plot of land which was also acquired under the same notification and for the same purpose to Rs.20,00,000/- (Rupees twenty lakhs only) per kani from Rs. 2,00,000/-(Rupees Two Lakhs only) per kani.

6. That, the Petitioners came to know of the enhanced award given to the land owner of the adjacent plot of land on 19.06.2014 and they made a prayer for certified copies of the judgment of Misc (LA) 26 of 2010 on 21.06.2014 and as they could not collect the correct case number, they applied for the certified copy of Misc (LA) 22 of 2010 on 25.06.2014. The certified copies of Misc (LA) 26 of 2010 was ready for delivery on 21.07.2014 and the same was collected on 22.07.2014.”

11. A bare reading of the above contention of the petitioners makes it abundantly clear that after the judgment was passed in the reference case, they initially chose to abstain from filing an appeal because of lack of unanimity amongst themselves and regarding the virtues of

filing an appeal and cost of filing such an appeal. So, it is apparent that initially they were not interested to prefer an appeal challenging the judgment passed by the learned L.A. Judge. It is their contention that in another reference case of an adjacent plot of land compensation was enhanced from Rs. 2,00,000/- to Rs. 20,00,000/- and thereafter they arrived at an agreement to prefer the appeal and in the meantime there was delay of 450 days.

12. Now let us see whether the reasons assigned by the petitioners can be termed as “*sufficient cause*” or not?

13. “*Sufficient cause*” is an expression, which is found in various statutes. It has been liberally construed in keeping with its ordinary dictionary meaning as “*adequate*” or “*enough*”. Any justifiable reason resulting in the appeal has to be understood as “*sufficient cause*”.

13.1. In the case of ***Ram Nath Sao v. Gobardhan Sao*** reported in ***AIR 2002 SC 1201***, the Apex Court has held—

“The expression ‘sufficient cause’ should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. Whether explanation furnished would constitute “sufficient cause” or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the

delay caused in taking steps. However courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high, causing enormous loss and irreparable injury to the party against whom the list terminates and defeating valuable right of such a party to have the decision on merit. While considering the matter the courts should strike balance between the resultant effect of the order it was going to pass upon the parties either way”

13.2. In the case of ***State of Nagaland v. Lipok AO*** reported in **(2005) 3 SCC 752 : AIR 2005 SC 2191**, the Supreme Court has observed—*The proof by ‘sufficient cause’ is a condition precedent for exercise of the extraordinary discretion vested in the court. The Court has further observed that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Apex Court also took cognizance of the usual*

bureaucratic delays which takes place in the functioning of the State and its agency/instrumentalities.

13.3. In the case of **Balwant Singh Vs. Jagadish Singh, 2010 AIR SCW 4848**, the Supreme Court has held—*Liberal construction of the expression “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. The expression “sufficient cause” implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.*

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 party concerned. 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 has 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 its acting vigilantly.

13.4. In the case of **Basawaraj Vs. The Special Land Acquisition Collector, 2013 AIR SCW 6510**, the Supreme Court has observed—*Sufficient cause is the cause for which*

party could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay.

14. Learned counsel Ms. P. Dhar referring to the observation in Para 15 of the Case of **Esha Bhattacharjee** (supra) has submitted that the petitioners assigned the reasons what is true and they have not concocted any story. While they have come before the Court in clean hand and with a true story the delay may be condoned.

15. The Supreme Court in the case **Esha Bhattacharjee** (supra), relying on various earlier decisions has culled out the principles which require to be looked into at the time of considering a petition for condonation of delay.

We may gainfully refer here Para 15 and 16 of the judgment which read as follows:-

“15. 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 encapsule 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.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*

a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are*

required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

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

16. In the case of **Monoharan** (supra) the Apex Court while considering the issue of condonation of delay in Para 8 of the judgment has quoted the observation of the Apex Court in various earlier judgments and condoned the delay in filing the appeal before the High Court. In para 8 and 17 the Court has observed thus—

“8. In State of Bihar v. Kameshwar Prasad Singh (2000) 9 SCC 94, it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merit. The relevant paragraphs of the case read as under: (SCC pp.102-104, paras 11-13)

“11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of

matters on merits. This Court in Collector, (LA) v. Katiji (1987) 2 SCC 107 held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that: (SCC p.108, para 3)

'1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

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 cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

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.

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.'*

12. *After referring to the various judgments reported in New India Insurance Co. Ltd. v. Shanti Misra [1976] 2 SCR 266, Brij Inder Singh v. Kanshi Ram (1918)ILR 45 Cal 94, Shakuntala Devi Jain v. Kuntal Kumari [1969]1 SCR 1006, Concord of India Insurance Co. Ltd. v. Nirmala Devi [1979] 118 ITR 507(SC), Lala Mata Din v. A. Narayanan [1970] 2 SCR 90, State of Kerala v. E.K. Kuriyipe 1981 (Supp) SCC 72, Milavi Devi v. Dina Nath (1982)3 SCC 366, O.P. Kathpalia v. Lakhmir Singh AIR (1984) 4 SCC 66, Collector, Land Acquisition v. Katiji (1987) 2 SCC 107, Prabha v. Ram Parkash Kalra 1987 Supp(1)SCC 399, G. Ramegowda, Major v. Sp. Land Acquisition Officer [1988] 3 SCR 198, Scheduled Caste Co-op. Land Owning Society Ltd. v. Union of India (199) 1 SCC 174, Binod Bihari Singh v. Union of India AIR 1993 SC 1245, Shakambari & Co. v. Union of India 1993 Supp(1) SCC 487, Ram Kishan v. U.P. SRTC 1994 Supp(2)SCC 507 and Warlu v. Gangotribai 1995 Supp (1) SCC 37, this Court in State of Haryana v. Chandra Mani*

2002(143) ELT 249(SC) held: (SCC p.138, para 11)

'11.....The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detection 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-a-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 authorize 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.'

To the same effect is the judgment of this Court in Tehsildar(LA), v. K.V. Ayisumma AIR 1996 SC 2750.

13. In Nand Kishore v. State of Punjab (1995)6 SCC 614 this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy 2008(228)ELT 162 this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes 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. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed in N. Balakrishnan v. M. Krishnamurthy 2008(228) ELT 162: (SCC p. 127, para 9)

‘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 uncontainable 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.'

17. In view of the aforesaid reasons, the impugned judgment passed by the High Court is not sustainable and is liable to be set aside as per the principle laid down by this Court in as much the High Court erred in rejecting the application for condonation of delay filed by the appellant. We accordingly, condone the delay in filing the appeal in the High Court as well."

17. In the case of **Basawaraj** (supra), the Supreme Court in Para 15 of the judgment has observed thus—

"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 bonafide 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.”

18. In the case of Brijesh Kumar (supra) the Supreme Court in Para 10,11, and 12 has observed thus—

“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.

11. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for

the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

12. In State of Karnataka v. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.”

19. It is the settled law as held by the Apex Court that the assigning of reasons seeking condonation of delay is not a mere formality. The reasons given by the petitioners seeking condonation must convince the judicial mind of a Court that the petitioners were prevented by ‘sufficient cause’ for not coming to the Court in time. It is also a settled law that limitation prescribed by statute is to be strictly followed for preferring an appeal or an application subject to the provision prescribed for condoning delay in preferring such appeal or application. Once the limitation prescribed by law expired, the petitioner is to explain the delay with sufficient reasons. In the present case, the petitioners themselves have stated that after the judgment was passed they chose to abstain from filing an appeal because of lack of unanimity etc. and thereafter they arrived

at an agreement to prefer an appeal which clearly shows that they were negligent to assert their right in preferring an appeal against the judgment passed by the learned L.A. Judge. The reasons assigned further show that they were encouraged to prefer an appeal after the judgment in another reference case was passed by the L.A. Judge i.e. in Case No. Misc. (LA) 22/2010.

20. The Supreme Court in the case of **Brijesh Kumar** (supra) has clearly held in Para 12 of the judgment that the relief granted by the Court in a similar case cannot be a ground for condoning the delay and laches. Further, I have perused the copy of judgment dated 19.01.2013 passed in Misc. (LA) 26 of 2010 and the copy of judgment dated 30.04.2013 passed in Misc. (LA) 22/2010. The copies of judgments are annexed in the connected L.A. Appeal. It appears that the Case No. Misc.(LA) 26 of 2010 arose out of acquisition of land at Mouja Birganj for construction of approach road to RCC bridge over river 'Gomati' whereas the case of Misc.(LA) 22 of 2010 arose out of acquisition of land for construction of approach road to permanent bridge over river 'Gomati' under Mouja Amarpur. So, it is clear that those two cases relate to acquisition of land under different Mouja but the purpose appears to be same for construction of approach road. Therefore, on merit also it does not appear *prima facie* that arising out of acquisition of land

under same Mouja and same notification both the cases arose and it was for comparable land, higher compensation was awarded. If the petitioners were really aggrieved by the impugned judgment passed by the learned L.A. Judge, they would immediately arrive at a consensus to file an appeal challenging the judgment. According to them they chose to abstain from filing an appeal initially may be for different reasons and that shows their negligence and/or reluctance in challenging the Judgment in appeal. It is, therefore, apparent that after judgment in another case they were inspired to prefer an appeal. Relief granted in another case cannot be regarded as the 'sufficient cause' for condoning delay in filing appeal in another case. It is apparently clear that the petitioners were sheer negligent in exerting their right and the petition preferred for condoning the delay suffers from negligence as well as for inaction on the part of the petitioners and hence, I find no reason at all to allow the petition of condonation of delay.

21. Accordingly, the petition seeking condonation of delay stands dismissed.

JUDGE.