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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL (STAMP) NO.29243 OF 2014
WITH
CIVIL APPLICATION NO.13136 OF 2014.

THE SUPERINTENDING ARCHAEOLOGIST, ARCHAEOLOGICAL SURVEY
OF INDIA.
=VERSUS=
JAYRAJ KAMLAKAR PANDE.

...

Mr.S.B.Deshpande, Assistant Solicitor General of India, for the Appellant/
Applicant.

Mr.A.D.Kasliwal, Advocate for the Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 06th April, 2015

Per Court:

1 This matter was heard for sometime on the last date. The delay caused in preferring the Second Appeal is of 06 days. I, therefore, indicated to the parties that on the next date they may prepare themselves for advancing their submissions on the Second Appeal as I was inclined to condone the delay of 06 days. Parties were agreeable.

2 As such, both the parties have canvassed their submissions on the Second Appeal itself. The delay of 06 days caused in preferring this Second Appeal is condoned by allowing the Civil Application.

3 The Appellant is the original Defendant in RCS No.408/2001, which was filed by the sole Respondent herein (original Plaintiff) seeking perpetual injunction against the Appellant. The Appellant is the Archaeological Survey of India, Government of India, Aurangabad Circle. The original Plaintiff is a resident of Aurangabad city.

4 The Trial Court allowed RCS No.408/2001 by its judgment dated 30.08.2006. On 11.09.2006, the Decree was prepared.

5 The Appellant herein preferred an appeal along with an application for condonation of delay of 04 years and 10 months, before the first Appeal Court. In view of the delay, the application was registered as MARJI No.334/2011. Obviously the Appeal was not registered before the first Appeal Court.

6 By the impugned judgment and order dated 01.08.2014, application MARJI No.334/2011 was rejected by the Appeal Court on the ground that the delay of 04 years and 10 months is not properly explained and sufficient evidence and documents are not produced by the Appellant herein.

7 I have considered the submissions of Mr.Deshpande, learned

Assistant Solicitor General of India appearing on behalf of the Appellant,
and who has relied upon the following judgments:-

- (i) Collector, Land Acquisition, Anantnag v/s Katiji,
AIR 1987 SC 1353.
- (ii) Sital Prasad Saxena v/s Union of India,
AIR 1985 SC 1 (three Judges).
- (iii) State of Haryana v/s Chandra Mani,
AIR 1996 SC 1623 (three Judges).
- (iv) State of West Bengal v/s Administrator, Howrah Municipality,
AIR 1972 SC 749.

8 I have heard Mr.Kasliwal, learned Advocate appearing for the
Respondent, and who has relied upon the following judgments:-

- (i) Oriental Aroma Chemical Industries Limited v/s Gujarat
Industrial Development Corporation & another,
2010 ALL SCR 816.
- (ii) Union of India v/s Nripen Sarma,
AIR 2011 SC 1237.
- (iii) Lanka Venkateswarlu v/s State of A.P.,
2011(4) Mh.L.J. 104.
- (iv) Amalendu Kumar Bera v/s The State of West Bengal,
2013 All SCR 1340.
- (v) Office of the Chief Post Master General v/s Living Media India
Limited,
2012 STPL (Web) 132 (SC).
- (vi) Maniben Devraj Shah v/s Municipal Corporation of Brihan
Mumbai,
2012 STPL (Web) 210 (SC).

9 As has been rightly observed by the Apex Court in the case of *Collector, Land Acquisition* (supra), to condone or not to condone is not the only question. Whether or not, to apply the same standard in applying the “sufficient cause” test to all the litigants regardless of their personality in the said context, is another.

10 Having considered the rival submissions and the law cited and having gone through the impugned judgment of the first Appeal Court, this Second Appeal is being decided at the admission stage itself by framing the following substantial questions of law:-

- (1) Whether, the delay caused in preferring an appeal or a proceeding, with no laches attributable, should be condoned by adopting a pragmatic approach so as to ensure that the ends of justice are met?
- (2) Whether, the lost opportunity to place on record the documents which could have explained the delay, should be considered as being fatal to the proceedings initiated by a limb of the Government of India?

11 The Appellant herein is the Archaeological Survey of India which has its Aurangabad Office at Aurangabad. Since it is a part of the Government of India, the decisions are taken after due consultation, by

the concerned office situated at New Delhi.

12 The Respondent had preferred the suit for seeking perpetual injunction over an area within the vicinity/ adjacent to the Bibi Ka Maqbara, a historical monument and which falls under Survey No.164. Same was decreed. The Appellant approached in Appeal. Delay of 04 years and 10 months was caused in preferring the Appeal before the first Appeal Court. The Respondent had claimed the suit property as being his ancestral property. The dispute arose on account of the Appellant attempting to fence the area adjacent to the historical monument Bibi Ka Maqbara. This caused the filing of the suit at the behest of the Respondent. The contention of the Appellant is that there was an encroachment by the Respondent/ Plaintiff.

13 With the suit having been decreed in favour of the Respondent herein, the Appellant was left with no option, but to prefer an appeal for challenging the same. In it's application for condonation of delay before the first Appeal Court, it was contended that the permission of the Head Office was required to be obtained. Due to procedural aspects concerning various offices of the Government of India, time was spent in obtaining permission. In November, 2010 the permission to prefer an appeal was granted by the Higher Authorities from New Delhi.

14 In the third week of November, 2010, the concerned Advocate representing the Appellant was intimated so as to enable him to prefer an appeal. At the relevant time, the office of the concerned Advocate was at Town Hall area situated in old Aurangabad city. Since the landlord had commenced the demolition of his property so as to construct the office building, the concerned Advocate had shifted his office to another place. After his office was ready in a span of about four months post intimation by the Appellant, it was noticed that he was unable to locate the file. Upon locating the file, the Appellant preferred the Appeal.

15 The Appellant Department examined the Superintending Archaeological Engineer working in the Aurangabad Office. The Respondent opposed the application. The Respondent chose not to lead evidence.

16 By its order dated 01.08.2014, impugned in this Second Appeal, the first Appeal Court has rejected the application for condonation of delay and thereby refused to condone the delay of about 4 years and 10 months.

17 Mr.Deshpande has canvassed that the first Appeal Court has

adopted a pedantic approach and has, therefore, declined to consider the reasons assigned by the Appellant. Officer Mr.Deshmukh, who was available on the post at the relevant time, was examined on the basis of the record available. Officer Mr.K.B.Rao, who was looking after the affairs of the Appellant at Aurangabad Office in between 2006 to 2010, was not available.

18 Mr.Deshpande has further submitted that the delay caused is neither deliberate nor intentional. The Appellant does not derive any advantage by delaying the matter. The delay is purely on account of procedural delays occurring in the correspondence between various limbs of the Government and consequentially, the files move at a slow pace.

19 Mr.Deshpande submits that laches are not attributable to the Appellant inasmuch as the Respondent has also not attributed any laches on the part of the Appellant's conduct. It is, therefore, submitted that if relevant record available with the Appellant has not been filed, either inadvertently or on account of laxity, it should not be treated as being fatal to the proceedings initiated by the Appellant since the Appellant is litigating against a private individual in connection with the property which is a Government land.

20 Mr.Deshpande further submits that the judgment and decree delivered by the Trial Court needs to be tested by the higher courts. Refusal to condone the delay by the first Appeal Court has resulted in shutting the doors of litigation on the Appellant.

21 Mr.Deshpande has relied upon the observations of the Honourable Supreme Court in paragraph 3 in the case of *Collector, Land Acquisition, Anantnag* (supra), which read as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature 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 is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

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 legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its

part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

22 Mr.Deshpande further relies upon paragraphs 6 and 8 of the judgment in the case of Sital Prasad Saxena (three judges) (supra), which read as under:-

- “6. We heard Mr. S.S. Khanduja, learned counsel for the appellants and Mr. G.D. Gupta, learned counsel for the respondents. Approach to the applications seeking condonation of delay in moving the application for substitution of parties who died during the pendency of civil appeal in the High Court has to be as observed by this Court in *Bhagwan Swaroop v. Moolchand and Hans Raj v. Sunder Lal Aggarwal*. In the present case the High Court unfortunately committed an error in rejecting the application for condoning the delay. It is the High Court which had to satisfy itself that the petitioner made out sufficient cause which prevented him from moving the application for substitution in time and not the trial Court. The

High Court may call for report of the trial Court but then cannot adopt the approach of a court exercising revisional jurisdiction. It must examine the material collected by the trial Court and come to its own conclusion. In this case the High Court observed that it was not persuaded to take a view different from the one taken by the trial Court. This is impermissible. The second error was that once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.

8. *Having heard learned counsel on either side we are satisfied that both the trial court as well as the High Court were in error in not condoning the delay in seeking substitution of heirs and legal representatives of the deceased/appellant in time. Cause for delay as urged appears to us to be sufficient which prevented them from moving the petition for substitution. We are satisfied that sufficient cause was made for condoning the delay. Accordingly, we first set aside the order passed in I.A. No.5745 of 1978 under section 5 of the Limitation Act seeking condonation of delay and grant the same. We set aside the order disposing of the appeal having abated and set aside the abatement. We condone the delay in seeking substitution and grant substitution. Accordingly, the heirs and legal representatives who applied for substitution in place of the deceased-appellant are directed to be brought on record. The appeal succeeds to this extent and is allowed and the orders of the High Court herein above set out are*

set aside and the matter is remitted to the High Court for disposal in the light of the observations made herein. Since the matter is an old one the High Court may dispose of it as expeditiously as possible. There will be no order as to costs. The appeal is disposed of accordingly.”

23 Mr.Deshpande has then relied upon paragraph 11 of the judgment of the Honourable Supreme Court in the case of State of Haryana v/s Chandra Mani (three judges) (supra), which reads as under:-

“11. *It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no*

person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented 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 authorise 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. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

24 Mr.Deshpande has then relied upon paragraph 26 of the judgment of the Honourable Supreme Court in the case of *State of West*

Bengal v/s Administrator, Howrah Municipality (supra), which is reproduced herein below:-

“26. *The legal position when a question arises under S. 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under S. 5, of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasis that courts have to use their judicial discretion in the matter soundly in the interest of justice.*”

25 Mr.Deshpande has, therefore, submitted that an attempt to explain the delay has been seriously made by the Appellant. He, however, frankly states that certain documents, which would have fortified the reasons assigned by the Appellant and which are available with the Appellant Department, could have been produced as evidence and these documents would have convinced the first Appeal Court that the delay was properly explained. No doubt, having not filed those documents, has resulted in rejection of the application filed by the Appellant. He,

therefore, submits that if an opportunity to place those documents before the first Appeal Court is granted, it would be possible for the Appellant to justify before the first Appeal Court the reasons assigned.

26 On the other hand, Mr.Kasliwal, learned Advocate appearing for the Respondent, has seriously opposed this Second Appeal. The contention is that the Appellant had enough opportunity to place on record such material if at all they were interested in proving their case. The Appellant Department cannot take refuge in it's status of being a limb of the Government and therefore, cannot justify the delay caused on account of their negligence and laxity. He further submits that there was sufficient opportunity available to the Appellant and could have, therefore, placed on record all such material available with it in support of it's application. By not doing so, the Appellant cannot be given the liberty by condoning their inability at the cost of the Respondent.

27 Mr.Kasliwal has canvassed that the Honourable Supreme Court in the case of *Oriental Aroma Chemical Industries* (supra) has considered the judgment in the case of *Collector, Land Acquisition, Anantnag* (supra) and yet has declined to condone the delay of 04 years for the reason that there was no proper explanation put forth by the Appellant therein. He points out from paragraph 13 of the judgment that

the delay has to be properly explained and cannot be so liberally condoned as is being canvassed by the Appellant.

28 Paragraph 13 of the *Oriental Aroma* judgment (supra) reads as under:-

“13. From what we have noted above, it is clear that the Law Department of respondent No.1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms.Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial Court on any of the dates of hearing. It is a matter of surprise that even though an officer of the rank of General Manager (Law) had issued instructions to Ms. Rekhaben M. Patel to appear and file vakalat as early as in May 2001 and Manager (Law) had given vakalat to Shri B.R. Sharma, Advocate in the month of May 2005, in the application filed for condonation of delay, the respondents boldly stated that the Law Department came to know about the ex parte decree only in the month of January/February 2008. The respondents went to the extent of suggesting that the parties may have arranged or joined hands with some employee of the corporation and that may be the reason why after engaging advocates, nobody contacted them for the purpose of giving instructions for filing written statement and giving appropriate instructions which resulted in passing of the ex parte decrees. In our view, the above statement contained in para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing of

appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act.”

29 Mr.Kasliwal has then placed reliance upon the observations of the Honourable Supreme Court in the case of *Union of India v/s Nripen Sarma* (supra) in paragraphs 4 and 7, which read as under:-

- “4. We have also gone through the condonation of delay application which was filed in the High Court. In our considered view, the High Court was fully justified in dismissing the appeal on the ground of delay because no sufficient cause was shown for condoning the delay.
7. On consideration of the totality of the facts and circumstances, we are constrained to dismiss this appeal on the ground of delay. However, in the larger interest, we are keeping the question of law open.”

30 Mr.Kasliwal then has placed reliance upon paragraph 26 of the judgment in the case of *Lanka Venkateswarlu* (supra), which reads as under:-

- “26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”, “justice oriented approach”, “substantial justice” can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are

rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.”

31 He has further relied upon paragraph 10 of *Amalendu Kumar*

Bera (supra), which is reproduced herein below:-

“10. *In the instant case as noticed above, admittedly earlier objection filed by the Respondent-State under Section 47 of the Code was dismissed on 17.8.2010. Instead of challenging the said order the Respondent-State after about one year filed another objection on 15.9.2011 under Section 47 of the Code which was finally rejected by the executing court. It was only after a writ of attachment was issued by the executing court the respondent preferred civil revision against the first order dated 17.8.2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been shown which entitle the respondent to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the*

decree holder puts the decree in execution. As noticed above, the decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the Respondent-State from interfering with the possession of the suit property of the plaintiff-appellant. It is evident that when the State tried to interfere with possession the decree holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. In our opinion their delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. This aspect of the matter has not been considered by the High Court while deciding petition for condoning the delay. Merely because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned."

32 He has then relied upon paragraph 6 of the judgment in the case of *Office of the Chief Post Master General* (supra), which reads as under:-

“6. Since learned senior counsel for the respondents seriously objected to the conduct of the appellants in approaching this Court after enormous and inordinate delay of 427 days in filing the above appeals, we intend to find out whether there is any “sufficient cause” for the condonation of such a huge delay. In view of the fact that the application for condonation of delay in filing the SLPs dated 10.02.2011 does not contain acceptable and plausible reasons, we permitted the appellant-Postal Department to file a better affidavit explaining the reasons for the same. Pursuant to the same, an

affidavit has been filed on 26.12.2011. After taking us through the same, learned Additional Solicitor General submitted that in view of series of decisions of this Court and the appellant being a Government Department, delay may be condoned and an opportunity may be given to put-forth their stand as to the impugned judgment of the High Court.”

33 I have considered the submissions of the learned Advocates. It is not in doubt that the delay caused is not to be condoned as a matter of course or on the ground of sympathy. Similarly, the Government Departments, as like the Appellant, do not have the legitimate right to seek condonation of delay merely because they happen to be the limb of the Government and on the assumption that the files in the Government Offices always move at snail's pace.

34 The Bibi-ka-Maqbara is a beautiful mausoleum of Rabia-ul-Daurani @ Dilras Banu Begum, the wife of the Mughal Emperor Aurangazeb. This mausoleum is believed to be constructed by Prince Azam Shah in memory of his mother between 1651 and 1661 A.D.. The marble for this mausoleum was brought from mines near Jaipur. The mausoleum draws its inspiration from the world famous Taj Mahal of Agra and hence, is rightly known as the “Taj of Deccan” (*source: World Heritage Sites-Archaeological Survey of India*).

35 What I find in the present case is that the suit land is adjacent to a historical monument, which is said to be about 360 years old. The Respondent claims to have let out the said land to a few tenants and the portion of the land is being used as parking place adjacent to the monument.

36 I have no intention of pre-judging the matter. However, it needs to be noted that the Respondent had filed the suit only for seeking perpetual injunction against the Appellant herein. The issue of ownership, title and interest over the suit property has yet not been adjudicated upon. It ought not to so happen that the portion of the land, as close as it is to a historical monument, belongs to the Government of India and is being utilized by a private individual. The judicial scrutiny of the said aspect is not possible only because the Appellant has caused the delay of 04 years and 10 months in preferring the Appeal and which is not condoned.

37 I have also noted that the grounds set out by the Appellant in the application at issue indicates an effort towards explaining the delay caused in preferring the Appeal. The documents and office orders concerning the sanction of permission to prefer an appeal, should have been brought before the first Appeal Court. It is asserted by the Appellant

that the permission to prefer an appeal was accorded for the first time in November, 2010. Subsequent events in relation to the Advocate who eventually filed the first appeal have also been stated.

38 In this backdrop and in the light of the peculiar facts of the case, coupled with the factor of the Archaeological Survey of India being involved, I find it proper to give the Appellant an opportunity to place all relevant documents on record and lead proper evidence so as to be able to support its reasons for seeking condonation of delay. Nevertheless, the rigours of litigation are bound to cause sufferings to the Respondent as a resultant effect. His sufferings can be made less painful by imposing costs upon the Appellant, which shall be deposited before the first Appeal Court.

39 Considering the circumstances recorded above and in view of the observations of the Apex Court in the cited reports, I feel that the impugned judgment is the outcome of a pedantic approach adopted by the first Appeal Court and which has, therefore, refused to condone the delay. I, therefore, answer the issues accordingly.

40 In the light of the above, I pass the following order:-

- (a) The Second Appeal is partly allowed.

- (b) The impugned order dated 01.08.2014 delivered in MARJI No.334/2011 is quashed and set aside.
- (c) The said application MARJI No.334/2011 is relegated back to the concerned first Appeal Court at the stage of recording of evidence.
- (d) The Appellant is granted liberty to place documents on record and lead evidence to prove the said documents within a period of TWELVE WEEKS from today.
- (e) The Respondent will be at liberty to cross-examine the Appellant's witnesses and confront them on the documents.
- (f) Since the Respondent had not led any evidence, liberty to lead evidence is granted to the Respondent after the recording of evidence on behalf of the Appellant is closed.
- (g) Needless to state, earlier evidence recorded shall not be discarded and shall be considered as a part of the oral and documentary evidence to be taken into account while deciding the application.
- (h) The first Appeal Court shall endeavour to decide MARJI No.334/2011 as expeditiously as possible and preferably on or before 31st December, 2015.
- (i) The observations made by this Court in this order as well as those made by the first Appeal Court in the impugned judgment, which has now been set aside, shall not influence the first Appeal Court while deciding MARJI No.334/2011.
- (j) The Appellant shall deposit an amount of Rs.25,000/-

(Rupees Twenty Five Thousand) as costs before the first Appeal Court within a period of SIX WEEKS from today.

- (k) Upon depositing the amount, the Respondent will be at liberty to withdraw the same.
- (l) On failure to deposit the said amount, the Appellant shall lose it's right to lead evidence as granted by this Court and this order shall then stand recalled leading to the dismissal of this Second Appeal.
- (m) The Civil Application is also disposed of.

(RAVINDRA V. GHUGE, J.)