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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: 14.10.2015**

% **RSA 366/2015**

PARAS RAM & ORS

..... Appellant

Through: Mr. Neeraj Malhotra and Manish  
Kumar Saryal, Advocates

versus

OM PRAKASH (DECEASED) NOW REPRESENTED BY HIS  
LEGAL REPRESENTATIVES IMARTI DEVI & ORS

..... Respondent

Through: Ms. Geetanjali Mohan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**VIPIN SANGHI, J. (OPEN COURT)**

**Cav No.1100/2015**

Since the caveator has put in appearance, the caveat stands discharged.

**C.M. No.23507/2015**

Exemption allowed, subject to all just exceptions. The application stands disposed of.

**RSA 366/2015**

1. Admit.
2. After hearing counsels for the parties, the following substantial question of law arises for consideration and is framed:
  - i) Whether the approach of the First Appellate Court in dealing

with the appellant's application under section 5 of the Limitation Act to seek condonation of three days delay in filing the first appeal, in the facts and circumstances of the case, is perverse?

3. Since the question of law involved is rather short, and covered by the decision of this Court in RSA No.352/2014 titled *Satyawan v. Union of India & Ors.* on 09.10.2015, with the consent of parties, I proceed to dispose of the present second appeal at this stage.

4. The appellant has preferred the present second appeal to assail the order dated 09.09.2015 passed by Sh. Rakesh Pandit, learned ADJ-03 (SE), Saket Courts, whereby he has dismissed the first appeal preferred by the appellant being RCA No.4/2015 on the ground that the same was barred by limitation. The application preferred by the appellant under section 5 of the Limitation Act to seek condonation of three days delay in filing the first appeal was rejected as not disclosing sufficient cause, and on that premise the appeal has been dismissed.

5. The appellant/plaintiff had preferred the suit being Suit No.345/2011 for possession, which was dismissed on 22.12.2014 on the ground that the suit had abated, and that the appellant had no independent right to pursue the suit. The appellant then preferred the first appeal, as aforesaid with an application to seek condonation of three days delay in filing the first appeal.

6. The appellant stated in his application under Section 5 of the Limitation Act, that the certified copy of the judgment dated 22.12.2014 was

applied for on the very next date, i.e. 23.12.2014. The same was made available on 02.01.2015. The appellant handed over the relevant documents along with certified copy of the judgment of Trial Court to the counsel for the appellant on 15.01.2015, who thereafter drafted and prepared the appeal. The same was filed with three days delay.

7. The First Appellate Court while dismissing the application has observed that the counsel who had prepared the appeal could have filed the same on or before 02.02.2015 – the date on which limitation was expiring, as he had ample time of about 15 days to prepare the same and file the appeal. The First Appellate Court held that the person seeking condonation of delay had to explain the delay on a day to day basis and, therefore, the appellant had to explain as to why he could not file the appeal on 03.02.2015, 04.02.2015 and thereafter on 05.02.2015 (wrongly noted in the impugned judgment/order as 04.04.2015 and 05.05.2015). The First Appellate Court has held that the appellant has not explained the said delay. While dismissing the said application, the First Appellate Court had also made observation on merits.

8. The reasoning of the First Appellate Court as found in the impugned order reads as follows:

*“No doubt the law regarding judicial discretion under section 5 Limitation Act, for condoning the delay in filing any proceedings, sufficiently crystallised by Hon. Apex Court. It cannot be denied that the delay of any number of days can be condoned but if sufficiently explained. Moreover, the jurisprudence of law of limitation is that, once the period of limitation is over with respect to any proceedings, reciprocally a right evolved in favour of opposite party. This right can only be curtailed by a judicial discretion under section 5 Limitation*

*Act. However, this judicial discretion is to be exercised not arbitrarily but as per the law already established by legislation or judicial pronouncement by superior court.*

*In this case, the appellant had sought for condonation of delay by three days. Nowhere it is explained what are the reasons for this delay and why court should exercise this judicial discretion in condonation of delay”.*

9. Learned counsel for the appellant submits that the Supreme Court has repeatedly held in ***Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others***, (2002) 3 SCC 195; and ***S. Ganesharaju (Dead) Through LRs Vs. Narasamma (Dead) Through LRs and Others***, (2013) 11 SCC 341, that while dealing with an application seeking condonation of delay under section 5 of the Limitation Act, which is paramateria with Order 41 Rule 3A CPC, the Court has to lean in favour of condoning the delay. The rights of the party should substantively be determined, and should not be denied on mere technicalities. The intention of the party has to be seen from his conduct, and it has to be seen whether the delay is deliberate or whether it is unintentional.

10. Counsel for the appellant has also placed reliance on ***Vedabai alias Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil & Ors.***, (2001) 9 SCC 106, to submit that where the delay is of a few days, the court should adopt a liberal approach. The Courts have to adopt pragmatic approach and a distinction has to be drawn with cases where the delay is inordinate-thus giving rise to a question of prejudice to the opposite party.

11. Learned counsel for the respondent, in support of the impugned judgment, has sought to place reliance on the Division Bench judgment of the Madhya Pradesh High Court in ***Ajitsingh & Anr v. Bhagwanlal Master***

**& Others**, AIR 1989 MP 302, wherein the Division Bench has observed that when the lower Appellate Court exercises its jurisdiction to dismiss the appeal as time-barred under new Rule 3A of Order 41 CPC, it merely decides the question as to whether the appellant had sufficient cause for not presenting the appeal within the period prescribed by law of limitation, and that question evidently would be a pure question of fact. The Division Bench observed that if a second appeal is allowed, that would tantamount to allowing deliberately the workload of the High Court to increase illogically and irrationally. It was observed that there was no occasion for the High court in such a case to deal with any question of law.

12. Having heard learned counsels, perused the impugned order/judgment and the decision relied upon by the parties and the decision of this Court in **Satyawan** (supra), I am inclined to allow the present appeal. The approach of the First Appellate Court, to say the least, is shocking and borders on perversity. The appellant had applied for certified copy of the judgment and decree of the Trial Court on the very next date, i.e. 23.12.2014. The same was made available on 02.01.2015. The appellant fairly disclosed that he had handed over the certified copy along with the relevant documents to the counsel on 15.01.2015, who took some time to prepare the appeal. The same was filed with merely three days delay. In these circumstances, the intention of the appellant to pursue his statutory remedy of first appeal was clearly demonstrated, as he had taken all the steps which he could have taken to prefer the first appeal. The delay of three days had occurred in the office of the counsel. The appellant could not be held responsible for the same, and certainly it could not be said that the delay was deliberate or

engineered to derive any advantage or cause any prejudice to the respondent. There was no benefit to be derived by the appellant by delaying his appeal intentionally or consciously. His suit for possession had been dismissed as having abated, the respondent was, and continues to remain in uninterrupted possession.

13. Recently, in RSA No.352/2014 **Satyawan** (supra), this Court has considered the aforesaid decision of the Madhya Pradesh High Court in the light of the judgment of the Supreme Court in **Ram Nath Sao** (supra) and **S. Ganeshraju** (supra), and held as follows:

*11. The observations made by the Division Bench of the High Court of Madhya Pradesh with regard to the nature of the question involved in a second appeal – which arises on account of dismissal of the first appeal as being barred by limitation under Rule 3A of Order XLI CPC, in my view, are observations which cannot be said to constitute the ratio of the said decision. There is no discussion found in the said judgment, on the basis of which it could be concluded that in every such case, the question that would arise of consideration would be only a pure question/issue of fact. The proposition stated by the Division Bench, with due respect, appears to be very broadly stated. It cannot be said that in every case the dismissal of the application under Order XLI Rule 3A read with Section 5 of the Limitation Act would raise only a question of fact, with regard to the cause for the delay being sufficient, or not.*

*12. The present case is a live example where the question arising in the present appeal cannot be said to be merely a question of fact. It raises a question of law, and that too, a substantial question of law, since it concerns the approach that should be adopted by the First Appellate Court in dealing with the appellant's application under Section 5 read with Order XLI Rule 3A CPC. The manner in which the discretion is exercised by the Court, while dealing with an application under Section 5*

*of the Limitation Act, read with Order 41 Rule 3A CPC may raise an substantial question of law, if the exercise of that discretion is not founded upon correct principles. If the approach of the First Appellate Court in dealing with the said application is not in accordance with law, the same would certainly raise a substantial question of law for consideration of this Court.*

- 13. With greatest respect, I cannot agree with the observations made by the Hon'ble Division Bench of the High Court of Madhya Pradesh that to allow such appeals would lead to increase, illogically and irrationally, the workload of the High Court. The Courts of justice are meant to dispense justice to parties wherever a good cause is shown, and merely on account of the fact that inflow of cases may increase, the Courts would not shun their responsibility and shut out even deserving cases.*
- 14. The approach of the First Appellate Court has been myopic in dealing with the application of the appellant under Section 5 read with Order XLI Rule 3A CPC. The First Appellate Court has assumed that the appellant had approached the Clerk of some other counsel, or some other counsel, or that the file had been misplaced in the office of some other counsel. The appellant did not claim that after the file had been traced in the office of the counsel, he had approached some other counsel to file the first appeal. Therefore, no fault could be found with the appellant in not disclosing the name of the counsel, or the Clerk in his application.*
- 15. In any event, even if there were unanswered questions which the Court desired the appellant to answer to be convinced that he was not callous in his approach to the Appellate Court, the Court should have granted an opportunity to the appellant to file a better affidavit. The valuable right of first appeal available to the plaintiff/ appellant, who had contested the suit for nearly 16 years, should not have been shut out on such a technicality. The delay of 98 days in preferring the first appeal could not be said to be so gross, as to per se lead the First Appellate Court to conclude that the appellant had been*

*completely callous, or indifferent to his right to prefer the first appeal. The First Appellate Court should not have lost sight of the fact that the appellant had been dismissed from service while serving as a Constable in the year 1994, and for a person who has already been in litigation for 16 years, it may not have been possible to garner the resources to prefer a first appeal very easily. The appellant had nothing to gain by delaying his approach to the Appellate Court. The same could not be said to be deliberate or calculated to serve any other objective. At the same time, the delay in filing the first appeal did not cause the respondent to suffer any prejudice. It is not that the respondent was waiting for the appellant to prefer an appeal, and the same not having been preferred in time, it has altered its position to its prejudice.*

16. The Supreme Court in **Ram Nath Sao @ Ram Nath Sahu** (*supra*) observed in paragraphs 12 & 13 as follows:

*“12. Thus it becomes plain that **the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision 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. In a particular case 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. But one thing is clear that the 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 bona 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 and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.***

13. *In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.”*

*(Emphasis Supplied)*

17. *In this decision, the Supreme Court cited several earlier decisions, including the decision in **N. Balakrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123. In that case, the application filed to seek setting aside of the ex-parte decree was delayed by 883 days. The Supreme Court in the said decision observed as follows:*

*“8. The appellant’s conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not*

*very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.*

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    x        x        x        x        x        x        x

*The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The timelimit 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.*

18. In **N. Balakrishnan** (*supra*), the Supreme Court further observed:

*“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 (1969) 1 SCR 1006 and State of W.B. v. Administrator, Howrah Municipality (1972) 1 SCC 366.*

*13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.*

*19. Similarly, in S. Ganesharaju (supra), the Supreme Court, inter alia, observed:*

*"12. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show malafides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.*

*13. The Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.*

*14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.”*

*(Emphasis Supplied)”.*

14. In *Vedabai* (supra), the delay in filing the appeal before the first appellate court was seven days. The application to seek condonation of the said delay was dismissed by the first appellate court and the civil revision had also been dismissed by the High Court of Bombay. The Supreme Court in this decision observed as follows:

*“In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach*

*but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard –and- fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause” the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Additional District Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the Limitation Act is exercised by the Additional District Judge in contravention of the law laid down by this Court, that the expression “sufficient cause” should receive liberal construction, in catena of decisions (see State of West Bengal v. The Administrator, Howrah Municipality & Others, [1972] 1 SCC 366 and Smt. Sandhya Rani Sarkar v. Smt Sudha Rani Debi & Others, [1978] 2 SCC 116). The High Court in exercising its jurisdiction under Section 115 C.P.C. failed to correct the jurisdictional error of the Appellate Court.”*

15. In the light of the aforesaid discussion, the aforesaid substantial question of law is answered in favour of the appellant in the affirmative. The delay in filing the first appeal is condoned. The first appeal is remanded back for reconsideration on merits. The observations made by the First Appellate Court on merits in the impugned judgment shall be ignored while hearing the appeal on merits, and the First Appellate Court shall arrive at its decision on the merits, after hearing both the parties.

16. The parties shall appear before the First Appellate Court on 16.11.2015.

**VIPIN SANGHI, J**

**OCTOBER 14, 2015**

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