

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
And
THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

I.A.No.1 of 2019 in/and C.C.C.A.No.238 of 2019

and

I.A.No.1 of 2019 in/and C.C.C.A. No.257 of 2019

COMMON ORDER : *(Per Hon'ble Sri Justice M.S. Ramachandra Rao)*

The 1st respondent in both these applications is the plaintiff in O.S.No.183 of 2005 on the file of the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad.

2. He was employed in the Police Department of the erstwhile composite State of Andhra Pradesh since 1.2.1974 when he joined as a Direct Recruit Civil Sub-Inspector. He was promoted as Inspector of Police on 30-4-1985. He contended that the 1st defendant, who worked as District Magistrate under A.P. Prevention of Dangerous Activities of Boot-Leggars, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 without application of mind, out of malice and grudge at the instance of defendants 1-5, issued orders on 19-12-2001 under the said statute for his preventive detention and on 20-12-2001, he was illegally detained. He contended that though he submitted a representation to 1st defendant on 31-12-2001, it was rejected summarily. He then approached the Advisory Committee consisting of three ret'd. High Court Judges who opined on 25.1.2002 that there were no sufficient reasons for his detention. So the said detention orders were revoked vide G.O.Rt.No.421 dt.25-1-2002 and he was released on 26-1-2002 from prison. He stated

that he was unfairly dubbed as a land grabber by defendants 1-5, victimized and defamed by them on TV and through Newspaper publications and he was even denied promotion as Deputy Superintendent of Police. He gave a legal notice to the defendants under Sec.80 of the CPC on 8-1-2003 seeking damages and then filed O.S.No.183 of 2005 on the file of the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad.

3. In the suit he sought damages of Rs.1.00 crore with interest @ 24% p.a. on the ground that he was illegally detained under A.P. Prevention of Dangerous Activities of Boot-Leggings, Decoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 for a period of 36 days from 20-12-2001, that he was falsely branded as a land grabber and victimized, that his fundamental rights were violated by petitioners and other respondents, that his reputation was damaged and he also suffered mental agony.

4. The petitioner in I.A.No.1 of 2019 in CCCA.No.238 of 2019 was impleaded as 1st defendant in the suit. He is the former Director General of Police by name P.Ramulu, I.P.S.

5. The petitioners in I.A.No.1 of 2019 in CCCA.no.257 of 2019 were impleaded as defendant nos.6 and 7 in the said suit. They are the then Principal Secretary to the Government, Home Department, A.P. Secretariat, Hyderabad and the then Chief Secretary to Government of A.P., Secretariat, Hyderabad.

6. The 1st defendant filed W.P.7807 of 2007 in this Court and initially stay of proceedings in the suit was granted on 10.07.2007 in W.P.M.P.No.10022 of 2007, but later the W.P was dismissed on 21-2-2014. The trial of the suit proceeded thereafter.

7. The said suit was partly decreed on 06-10-2017 for Rs.75.00 lakhs and interest at 7% p.a. was awarded thereon from the date of suit till realization against petitioners herein / defendant nos.1, 6 and 7; and it was directed that if the defendant no.1 / petitioner in I.A.No.1 of 2019 in C.C.C.A.No.238 of 2019 failed to pay the same, the defendant nos.6 and 7 / petitioners in I.A.No.1 of 2019 in C.C.C.A.No.257 of 2019 should pay the same to the plaintiff / 1st respondent and recover it from the defendant no.1 / petitioner in I.A.No.1 of 2019 in C.C.C.A.No.238 of 2019. Costs of Rs.1,28,698/- were also awarded.

8. Challenging the same, C.C.C.A.No.238 of 2019 was filed by 1st defendant in O.S.No.183 of 2005 and C.C.C.A.No.257 of 2019 was filed by defendant Nos.6 and 7 in the said suit.

9. I.A.No.1 of 2019 is filed by the 1st defendant to condone the delay of 545 days in preferring C.C.C.A.No.238 of 2019; and I.A.No.1 of 2019 in C.C.C.A.No.257 of 2019 is filed by defendant nos.6 and 7 to condone the delay of 376 days in filing C.C.C.A.No.257 of 2019.

The plea of the 1st defendant / petitioner in I.A.No.1 of 2019 in CCCA.no.238 of 2019

10. In the affidavit filed in support of I.A.No.1 of 2019 in C.C.C.A.No.238 of 2019, it is the contention of the 1st defendant / petitioner therein that the claim of the plaintiff is barred by limitation; that there was a stay order granted in W.P.M.P.No.10022 of 2007 in WP .No.7807 of 2007 and he was under the impression that the stay order was still subsisting.

11. It is also stated that the 1st defendant was preoccupied with his family obligations, that he underwent surgery for his heart ailments and there were also certain tragic events in his family including death of his younger son, his mother and his grand child; so he did not consult his counsel for the status of the case and the counsel also did not participate in the proceedings before the trial Court after the dismissal of the Writ Petition.

12. The 1st defendant contended that he became aware of the judgment and decree dt.06-10-2017 in O.S.No.183 of 2005 only after receipt of summons in the Execution proceedings i.e. E.P.No.893 of 2019 seeking his arrest and detention for violation to pay the decretal amount. He contended that after he received summons, he collected the necessary documents and filed the appeal and the delay of 545 days in filing the appeal under Section 5 of the Limitation Act, 1963 may be condoned.

13. Sri P.Venugopal, learned Senior Counsel appearing for petitioner reiterated the said submissions and referred to certain

documents filed, which showed that the 1st defendant was admitted on 24-12-2018 in City Heart Centre, Hyderabad and was discharged on 25-12-2018 after he underwent a cardiac procedure. He also stated that the youngest son of the petitioner died on 11-05-2016, that the mother of the petitioner died on 08-07-2018 and the grand son of the petitioner died on 25-11-2015 and because of these events, the petitioner was in a disturbed state of mind and did not follow up the matter and the delay in filing the appeal thus occurred. He contended that the Court should liberally consider the application for condonation of delay since the petitioner has a good case on merits and condone the said period of delay.

The plea in the Counter affidavit of the 1st respondent / plaintiff in I.A.No.1 of 2019 in CCCA.No.238 of 2019

14. Counter-affidavit was filed by 1st respondent opposing this application.

15. He contended that the 1st defendant / petitioner in I.A.No.1 of 2019 in C.C.C.A.No.238 of 2019 cannot take refuge by stating that he was under the impression that the stay in W.P.No.7807 of 2007 was continuing, and that there is a presumption that the counsel would inform the 1st defendant about the dismissal of the Writ Petition.

16. He contended that after the Writ Petition was dismissed, a memo was filed by plaintiff on 27-03-2014 before the trial Court about the dismissal of the Writ Petition, that plaintiff also filed I.A.No.1280 of 2013 seeking permission from the Court below to proceed with the suit, and the said Court ordered notice to all parties

in the suit including the 1st defendant and the said notice was served on 1st defendant on 20-10-2014.

17. He contended that the 1st defendant was grossly negligent in prosecution the case before the Court below after the trial recommenced and he did not state what prevented him from appearing in the trial Court and participating in the suit proceedings in spite of his knowledge. It was pointed out that the evidence of the 1st defendant was eschewed because he did not appear before the trial Court to undergo cross-examination.

18. He also stated that the maintainability of the suit was decided by the trial Court on 08-06-2005 and the issue of limitation was also decided by it in I.A.No.337 of 2007 on 30-04-2007 and the 1st defendant did not carry the matter to the higher Courts and these orders have become final. It is stated that 1st defendant is estopped from re-agitating those issues.

19. It is also pointed out that the suit had been disposed of on 06-10-2017 and that the 1st defendant's son had died on 11-05-2016, and his grandson died on 25-11-2015, prior to the disposal of the suit. It is also stated that 1st defendant's mother died on 08-07-2018 long after disposal of the suit.

20. It is contended that the surgery of the 1st defendant was also between 24-12-2018 and 25-12-2018 more than an year after disposal of the suit, and all these grounds cannot be taken into account

as sufficient causes for seeking condonation of inordinate delay of 545 days in filing the appeal.

21. He pointed out that the 1st defendant had been appointed as Chairman of the Telangana State Tourism Development Corporation Limited, Hyderabad for 3 years vide G.O.Rt.No.349 dt.25-07-2015 and functioned in his office regularly till 26-05-2018 by drawing salary and allowances, and the said tragedies had not stopped the 1st defendant from attending his duty during the period 25.07.2015 to 26.05.2018 and so he cannot claim that these events prevented him from filing the appeal within time.

22. It is stated that the 1st defendant did not give proper explanation as to why he did not go to his counsel or why he remained silent without participating in the suit proceedings or why he did not file appeal in time though he had knowledge of passing of the decree.

23. It is pointed out that after passing of the decree, the plaintiff had issued notices on 24-05-2018 to the 1st defendant on his two addresses with a request to pay the decretal amount, but they were returned as 'unclaimed', and this indicates that the 1st defendant deliberately did not receive the notices. Vexed with the attitude of the 1st defendant, as a last chance, plaintiff had filed E.P.No.893 of 2019 to send the 1st defendant to civil imprisonment.

24. It is also pointed out that the copy application for obtaining judgment and decree of the Court below was filed by the 1st defendant

on 27-06-2019, long after the suit was decided on 06.10.2017, after service of notice in the said E.P. on the petitioner on 14-06-2019.

25. He prayed that I.A.No.1 of 2019 in C.C.C.A.No.238 of 2019 should be rejected since no sufficient cause has been shown for condonation of period of delay of 545 days in filing the appeal by the 1st defendant.

The plea of the petitioners / defendant nos.6 and 7 in I.A.No.1 of 2019 in CCCA.no.257 of 2019

26. Defendant nos.6 and 7 filed CCCA.No.257 of 2019 against the judgment and decree dt.06.10.2017 in OS.No.183 of 2005 and filed under Section 5 of the Limitation Act, 1963, I.A.No.1 of 2019 to condone the delay of 376 days in filing the said appeal.

27. It is contended by defendant nos.6 and 7 in I.A.No.1 of 2019 that since defendant nos.6 and 7 in the suit O.S.No.183 of 2005 were officers of the State of Andhra Pradesh, the judgment and decree dt.06.10.2007 in the suit was informed to the Government of Andhra Pradesh and the Government of Andhra Pradesh informed that the matter has to be dealt with by the Telangana Government alone. No documents evidencing the correspondence, if any, which was done with the State of Andhra Pradesh, has been filed. It is stated that though the appeal had to be filed on 04.01.2018, due to the above reason, it was not filed in time and the said delay of 376 days in filing the CCCA.No.257 of 2019 be condoned.

28. The learned Advocate-General appearing for defendant nos.6 and 7 contended that the said period of delay is liable to be condoned by liberally construing Section 5 of the Limitation Act, 1963 and also because the defendant nos.6 and 7 have a strong case on merits. He also placed reliance on **Hemlata Verma v. M/s ICICI Prudential Life Insurance Co.Ltd¹**, **Bhivchandra Shankar More vs. Balu Gangaram More and others²**, **K. Subbarayudu and others vs. Special Deputy Collector (Land Acquisition)³**, **B. Madhuri Goud vs. B. Damodar Reddy⁴**, **N. Balakrishnan vs. M. Krishnamurthy⁵**.

The plea in the Counter affidavit of the 1st respondent in I.A.No.1 of 2019 in CCCA.No.257 of 2019 / plaintiff

29. Counter-affidavit was filed by the 1st respondent / plaintiff opposing the said application for condonation of delay.

30. The 1st respondent / plaintiff contended that it was the Government of Telangana which was the appropriate authority to deal with the matter and the Government of Andhra Pradesh had nothing to do with it after the creation of the State of Telangana from 01.06.2014 under the A.P. Re-organization Act, 2014 in view of the fact judgment was rendered by the City Civil Court, Hyderabad which falls within the jurisdiction of the State of Telangana.

31. He relied upon Sections 104 and 105 of the said statute and contended that by operation of law, the State of Telangana would

¹ Order dt.1.7.2019 in CA.NO.5131 of 2019

² (2019) 6 S.C.C. 387

³ (2017) 12 S.C.C. 840

⁴ (2012) S.C.C. 693

⁵ (1998) 7 S.C.C. 123

stand substituted in the place of the State of A.P. in legal proceedings and the proceedings would continue accordingly. It is contended that the plaintiff was born, brought up in the area now falling in the State of Telangana, that his appointment and entire service was only in the State of Telangana, that he filed the suit also in the City Civil Court, Hyderabad within the jurisdiction of the State of Telangana and so the Government of Andhra Pradesh had no role.

32. It is pointed out that the plaintiff had addressed notices dt.10.1.2018 and 03.05.2018 to the defendant nos.6 and 7 requesting them to pay the decretal amount awarded to the plaintiff in O.S.No.183 of 2005 and recover it from the 1st defendant as per the terms of the said decree; defendant nos.6 and 7 gave replies evasively on 19.02.2018 and 24.05.2018 stating in the former reply that the decree has no bearing on the Government of Telangana and in the latter reply reiterating this stand and refusing to entertain any further correspondence in the matter.

33. It is also contended that defendant nos.6 and 7 were held by the Trial Court to be entitled to recover from the 1st defendant the decretal amount after paying the same to the plaintiff, and so in effect, there was no decree against defendant nos.6 and 7.

34. It is pointed out that the defendant nos.6 and 7 had appointed a person like the 1st defendant who passed the order of detention of the plaintiff for extraneous reasons and that was why the said judgment was rendered.

35. It is stated that defendant nos.6 and 7 have filed this appeal CCCA.no.257 of 2019 only to save the 1st defendant from the clutches of law, and no valid reasons have been given by them to condone the delay in filing the appeal.

36. It is contended that the plaintiff also addressed a letter dt.06.09.2018 to the then Home Minister of the State of Telangana enclosing his representations and requesting appropriate action, but no response was received by him.

37. It is stated that only the Advisory Board constituted by the Government of Andhra Pradesh which found the plaintiff to be innocent of offence of land grabbing and directed his release forthwith and the plaintiff was released from preventive detention on 26.01.2002.

38. It is pointed out that the actual delay in filing the appeal is 550 days and not 376 days and the period of delay was wrongly calculated.

39. Reliance is placed by the counsel for 1st respondent / plaintiff on the decisions in **Basawaraj and another vs. Special Land Acquisition Officer**⁶, **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others**⁷ and **Postmaster General vs. Living Media India Ltd.**⁸.

⁶ 2014 (1) ALD 33 (SC)

⁷ (2013) 12 SCC 649

⁸ (2012) 3 SCC 563

The point for consideration :

40. From the above contentions, the following point arises for consideration :

“Whether the delay of 545 days in filing CCCA.No.238 of 2019 by the 1st defendant in O.S.No.183 of 2005 and the delay of 376 days in filing CCCA.No.257 of 2019 by defendant nos.6 and 7 in O.S.No.183 of 2005 is liable to be condoned ?”

The Consideration by the Court

41. From the facts narrated above, it is clear that the 1st respondent in I.A.No.1 of 2019 in CCCA.No.238 of 2019 / I.A.No.1 of 2019 in CCCA.No.257 of 2019 / plaintiff in O.S.No.183 of 2005 had obtained a judgment and decree on 06.10.2007 directing defendant nos.1, 6 and 7 to pay him Rs.75 lakhs with interest @ 7 % per annum from the date of suit till realization; and in the event of defendant no.1 failing to do so, it was directed that the said amount be paid by defendant nos.6 and 7 to the plaintiff and then recover it from defendant no.1. Costs of Rs.1,28,698/- were also awarded to the plaintiff.

42. CCCA.No.238 of 2019 was filed by 1st defendant in the said suit on 03.07.2019 with a delay of 545 days in filing the said appeal and I.A.No.1 of 2019 has been filed in the said CCCA under Section 5 of the Limitation Act, 1963 to condone the said period of delay.

43. CCCA.no.257 of 2019 has been filed by defendant nos.6 and 7 on 01.05.2019 with a delay of allegedly 376 days and I.A.No.1 of 2019 has been filed in the said CCCA under Section 5 of the Limitation Act, 1963 to condone the said period of delay.

44. If we examine the reasons assigned by the 1st defendant for the delay in filing the CCCA 238 of 2019, firstly he has stated that he and others had filed WP.No.7807 of 2007 before this Court and had initially obtained a stay of proceedings in the suit on 10.07.2007 and he was under the impression that the said stay was continuing. But, admittedly, the said Writ Petition was dismissed on 21.02.2014 and the interim order granted in the suit was vacated. According to the plaintiff, he had then filed an application in the Court below to restart the proceedings in the suit and the court had issued notice to all the defendants and the 1st defendant received the same on 20.10.2014. Documents filed by the plaintiff along with his counter in the IA corroborate this fact. It is also contended that the 1st defendant did not appear in the suit and subject himself to cross-examination and his evidence was eschewed. These facts have not been denied by the 1st defendant / petitioner in I.A.No.1 of 2019 in CCCA.no.238 of 2019.

45. Also, since the 1st defendant had engaged a counsel in WP.No.7807 of 2007, it has to be presumed that he was aware of the dismissal of the said Writ Petition and he cannot plead ignorance of the same.

46. Further, it is not in dispute that the 1st defendant was appointed as Chairman of the Telangana State Tourism Development Corporation Ltd., Hyderabad for three years vide G.O.Rt.No.349 Youth, Advancement, Tourism and Culture Department of the State of

Telangana, dt.27.05.2015 and he continued in the said position till 26.05.2018.

47. It may be that the 1st defendant's son died on 11.05.2016 and his grandson died on 25.11.2015, but these events occurred before the suit O.S.No.183 of 2005 was decreed on 06.10.2017. Therefore, he cannot contend that on account of these events, he could not file the appeal in time.

48. The mother of the 1st defendant died on 08.07.2018, 9 months after the suit was decreed on 06.10.2017. Therefore, this reason also cannot be assigned by him as a ground to condone the inordinate delay of 545 days in filing the appeal.

49. The hospitalization of the 1st defendant was only from 24.12.2018 to 25.12.2018 in Citi Heart Center, Hyderabad for an cardiac angiography. This event was fourteen months after the suit was decreed. Therefore, this event also cannot be pleaded as a ground by him for not filing the appeal in time.

50. In any event, none of the above events had evidently precluded the 1st defendant from functioning as Chairman of the Telangana State Tourism Development Corporation from 27.05.2015 to 26.05.2018.

51. It is not as if the 1st defendant was an illiterate person, or a person who had no knowledge of the law, or a person who had no access to legal advice because he was a retired Director General of

Police of the State of Telangana and had been a member of the Indian Police Service.

52. In our considered opinion, the reasons for the delay of 545 days in filing the appeal given by him cannot be said to constitute sufficient cause warranting its condonation.

53. Coming to the I.A.No.1 of 2019 filed in CCCA.No.257 of 2019 by defendant no.s 6 and 7, the delay of 376 days shown therein is not correct and the correct period of delay is in fact 473 days.

54. Admittedly the plaintiff, after succeeding in the suit had addressed letters dt.10.01.2018 and 03.05.2018 to defendant nos.6 and 7 to satisfy the decree. But they replied on 19.02.2018 and 24.05.2018 to him stating that the preventive detention of the plaintiff had occurred in 2001 in the composite State of Andhra Pradesh and the decree passed by the Court in O.S.No.183 of 2005 on 06.10.2007 has no bearing on the Government of Telangana and they refused to entertain any further correspondence from the plaintiff.

55. This plea of defendants 6 and 7 is legally untenable in view of Section 104 of the A.P. Re-organization Act, 2014 which states as under :

“Section 104: LEGAL PROCEEDINGS:

Where immediately before the appointment day, the existing State of A.P. is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment between the States of Andhra Pradesh and Telangana under this Act, the State of Andhra Pradesh or the State of Telangana which

succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the existing State of Andhra Pradesh or added as a party to those proceedings, and the proceedings may continue accordingly.”

56. A reading of the said provision makes it clear that in pending legal proceedings even if the State of Andhra Pradesh were to be a party, post-bifurcation of the composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh, the successor State would automatically get substituted for the State of Andhra Pradesh in the said legal proceeding where it would otherwise be liable.

57. Since the plaintiff was admittedly born, brought up in the State of Telangana and served as a Police Officer in the State of Telangana, and the suit was filed by him was in the State of Telangana, it is the Chief Secretary and the Principal Secretary, Home Department of the State of Telangana who should satisfy the decree and the State of Andhra Pradesh has nothing to do with it.

58. Even the defendants nos.6 and 7, who are Principal Secretary to Government, Home Department and Chief Secretary, Government of Telangana, are not illiterate persons who have no knowledge of law, or access to legal advice, as the former belongs to the Indian Police Service and the latter belongs to the Indian Administrative Service. They had contested the suit through Counsel engaged before the Court below and they are deemed to be aware of the decision of the trial court.

59. Therefore, we do not find any justification for condoning the inordinate delay of 473 days in filing the CCCA no.257 of 2019 by defendant nos.6 and 7 either.

60. Both sides have cited several decisions mentioned above and we shall briefly discuss the same.

61. In 1998, the Supreme Court in **N. Balakrishnan** (5 supra) had occasion to consider the scope of power to condone delay vested in the Court under Section 5 of the Limitation Act, 1963. The Court held that condonation of delay is a matter of discretion of the Court and Section 5 does not say that such discretion can be exercised only if the delay is within a certain limit. It declared that *length of delay is no matter, and acceptability of explanation is the only criterion*. It observed:

“10. ... 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.

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*¹ and *State of W.B. v. Administrator, Howrah Municipality*².

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. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.” (emphasis supplied)

62. In the year 2012, in **B. Madhuri Goud** (4 supra), the Supreme Court set aside the decision of the High Court condoning delay of 1236 days in filing an appeal challenging an *ex parte* decree of eviction and observed that the idea underlying the concept of limitation is that *every remedy should remain alive only till the expiry of the period fixed by the legislature*; that the expression “sufficient

cause” used in Section 5 is elastic enough to enable the Court to apply the law in a meaningful manner which serves the ends of justice; and that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay. It however held that *no hard and fast rule has been or can be laid down for deciding applications for condonation of delay*. On the facts of the said case, the Court held that the plea of the respondent that he handed over documents to his Counsel who misplaced them was vague and the delay ought not to have been condoned by the High Court.

63. In 2013, in **Esha Bhattacharjee** (7 supra), the Supreme Court set aside the order of a Division Bench of the Calcutta High Court condoning delay of 2449 days in preferring an appeal challenging an interim order passed in a Writ Petition by a Single Judge of the said High Court. The Court laid down the following principles for considering applications for condonation of delay:

“21.1. (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.

21.2. (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.

21.3. (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4. (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.*

21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (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.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (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.*

21.9. (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.*

21.10. (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.*

21.11. (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.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the*

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

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

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.*

22.2. (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.*

22.3. (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.*

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

The Court observed that a statutory Committee like the respondent cannot remain totally indifferent to an order passed by the Court and sleep like “Kumbhakarna”. It held that *an unending period for launching remedy may lead to unending uncertainty and consequential anarchy.*

64. In the year 2014, the matter again fell for consideration in **Basawaraj** (6 supra), and the Supreme Court held that the applicant for condonation of delay must satisfy the Court that he was prevented

by “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay and the Court should examine whether the mistake is bonafide or was merely a device to cover an ulterior purpose. It explained that *the expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bonafides cannot be imputed to the party concerned.* In the case of negligence or want of bonafides, it held that no Court would be justified in condoning an inordinate delay by imposing any condition whatsoever. It held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. *The Court has no power to extend the period of limitation on equitable grounds.* “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party, but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. It reiterated that an *unlimited limitation would lead to a sense of insecurity and uncertainty*, and therefore limitation prevents disturbance or deprivation of what may have been acquired

in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

65. In 2017, in **K. Subbarayudu and others** (3 supra), an appeal filed in the High Court with delay of 3671 days by claimants challenging the judgment of the civil Court in a reference under Section 18 of the Land Acquisition Act, 1894 was dismissed on the ground of delay by the High Court. But the Supreme Court set aside the said order and condoned the said delay holding that the term "sufficient cause" has to be liberally construed so as to advance substantial justice; that with acquisition of lands, the life line of an agriculturist is lost; even if there is any omission on such claimant to adopt extra vigilance, there is no need to depict him as negligent or wanting of bonafides. It observed that interests of justice would be served by declining the interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay. This decision would not apply to the instant case because these appeals do not arise out of the Land Acquisition Act, 1894 in relation to payment of compensation.

66. In 2019, in **Bhivchandra Shankar More** (2 supra), the respondents filed a suit for partition and separate possession in 2007 and the said suit was decreed *ex parte* on 04.07.2008. On 15.10.2008, the appellant and respondents 14 and 15 filed application under Order IX Rule 13 CPC to set aside the *ex parte* decree. It was dismissed by the trial Court on 06.08.2010, though they pleaded that the son of the

appellant/defendant who received summons did not inform the appellant about the same. On 03.09.2010, the appellant and respondents 14 and 15 filed Civil Appeal No.108 of 2010, but later withdrew it on 11.06.2013. On the very next day i.e., 12.06.2013, they filed a regular appeal under Section 96 CPC challenging the *ex parte* decree passed in the suit with an application to condone delay of four years, ten months, and eight days. The Additional District Judge allowed it on 20.02.2014, but the High Court set aside the said order in a Writ Petition filed by respondents 1 to 8. The Supreme Court set aside the order of the High Court reiterating that the term “sufficient cause” should be liberally construed so as to advance substantial justice when there is no inaction, negligence or want of bonafides imputable to the appellant; that a defendant who suffered an *ex parte* decree can either file an application under Order IX Rule 13 CPC to set it aside, or he can file a regular appeal from the original decree under Section 96 CPC; the scope of enquiry in both these remedies is different; and merely because the defendant pursued the remedy under Order IX Rule 13 CPC, it does not prohibit the defendant from filing an appeal, if his application under Order IX Rule 13 CPC is dismissed. It held that the right of appeal under Section 96 CPC is a statutory right and the defendant cannot be deprived of it. This decision turns on its facts and cannot be applied to the instant case.

67. In **Hemlata Verma** (1 supra) also decided in 2019, the Supreme Court set aside the order of the National Consumer Disputes

Redressal Commission dismissing a Revision Petition which was filed with a delay of 207 days as barred by limitation. On the facts of the said case, the Court held that averments in the application for condonation of delay constitute sufficient cause within the meaning of Section 5 of the Limitation Act, and the Court should take a liberal view. This decision also turns on the facts of the said case and cannot be applied to the instant case.

68. In the above decisions, the Supreme Court had accepted that though the power to condone delay conferred under Section 5 of the Limitation Act, 1963 is to be liberally construed, only so long as negligence, inaction or lack of bonafides cannot be imputed to the applicant seeking condonation of delay. It had held that there is no hard and fast rule and each case should be decided on its own facts. It has held that the applicant for condonation of delay must satisfy the Court that he was prevented by “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. It has also cautioned that an unlimited limitation would lead to a sense of insecurity and uncertainty. No Court would be justified in condoning an inordinate delay caused by negligence or want of bonafides by imposing any condition whatsoever.

69. Applying the above tests, the circumstances pleaded by the 1st defendant and also by defendants 6 and 7, in our considered opinion do not constitute “sufficient cause” within the meaning of the said

term under Section 5 of the Limitation Act, 1963 and their conduct not only indicates negligence, but also deliberate inaction.

70. In particular, the stand of defendants 6 and 7 in replying on 19.02.2018 and 24.05.2018 to the letters dt.10.01.2018 and 03.05.2018 of the plaintiff indicates lack of bonafides on their part also. Government officials like defendants 6 and 7 ought not to offer such reasons not supported by law.

71. In this context, the decision of the Supreme Court in (2012) **Postmaster General and others** (8 supra) is of particular relevance. In the said case, the appellant filed a Special Leave Petition in the Supreme Court challenging the judgment of the Delhi High Court with a delay of 427 days and a plea was raised that since the appellant was a Government Department, delay may be condoned and an opportunity may be given to it to put forth its stand on the correctness of the impugned judgment of the High Court. In the said case, the Court noticed that even application for certified copy of the order of the Delhi High Court was filed belatedly by the Department and that from day one, the Department and the persons concerned did not evince diligence in prosecuting the matter to the Supreme Court by taking appropriate steps. In that context, while refusing to condone the delay, the Court held:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim

that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few." (emphasis supplied)

72. The principle laid down in the case of Post Master General case (Supra) was followed in the case of **State of U.P.v. Amarnath Yadav**⁹, wherein the Supreme Court held that sufficient cause to condone the delay of 481 was not explained by the State.

⁹ (2014) 2 SCC 422

73. In a recent pronouncement of the Supreme Court in the case of **State of Odisha (Vigilance) v. Purnachandra Kandi**¹⁰, reiterated the principle laid down in Post Master General & others (Supra) in relation to condonation of delay and the Supreme Court while dismissing the petition was pleased to observe –

“A mere government inefficiency cannot be a ground for condoning the delay. It is for the petitioner to put its own house in order.”

74. However, turning to the facts of the present case as detailed hereinabove, the explanation offered by the 6th & 7th respondents in not preferring the appeal in time cannot be considered as “sufficient cause” more particularly, when it involved financial implication on the State, and so it is supposed to act diligently, as public money is involved.

75. In the facts and circumstances of the present applications, we are satisfied that the petitioner in I.A. No.1 of 2019 in CCCA No.238 of 2019/1st defendant in O.S. No.183 of 2005 and the petitioners in I.A. No.1 of 2019 in CCCA No.257 of 2019/defendants 6 and 7 in O.S. No.183 of 2005 have been grossly negligent in pursuing their remedy of appeal against the judgment and decree in the said suit and their deliberate inaction and dilatory strategy cannot constitute ‘sufficient cause’ entitling them to the relief of condonation of the delay in filing their respective appeals.

¹⁰ Judgment in S.L.P. (Crl.) Diary No.(s). 29657 of 2019, dt.02.09.2019

76. Accordingly, I.A. No.1 of 2019 in CCCA No.238 of 2019 and I.A. No.1 of 2019 in CCCA No.257 of 2019 are both dismissed. Consequently, both the CCCA No.238 of 2019 and CCCA No.257 of 2019 are also dismissed. No costs.

77. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. VINOD KUMAR

Date: 01-10-2019

VSV/MRKR

