IN THE HIGH COURT OF MANIPUR
AT IMPHAL
MC(RFA) No. 1 of 2019
Ref: RFA No. 1 of 2019

1. Smt. Laishram Damayanti Devi, aged about 66 years, D/o (L) L. Gourachand Singh of Keishampat Leimajam Leikai, P.S. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. Smt. Laishram (N) Chingangbam (O) Reeta Devi, aged about 55 years, W/o Ch. Sarat Singh of Kwakeithel Laishram Leikai, P.S. Imphal P.S. Singjamei, Imphal West District, Manipur-795008.
3. Shri Laishram Jiten Singh, aged about 40 years, S/o L. Ibochou Singh of Sagolband Lukram Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur- 795001.

……. *Applicant/s*

– Versus –

1. Shri Thounaojam Tarunkumar Singh, S/o Th. Bira Singh of Keishampat Leimajam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur-795001 now died by his LRs:

(a) Smt. Thounaojam (O) Sakuntala Devi, aged about 53 years, W/o Th. Tarunkumar Singh.

(b) Shri Thounaojam Jayee Singh, aged about 36 years, S/o Th. Tarunkumar Singh.

(c) Shri Thounaojam Geri Singh, aged about 33 years, S/o Th. Tarunkumar Singh.

(d) Km. Thounaojam Karishma Devi, aged about 26 years, D/o Th. Tarunkumar Singh.

(e) Km. Thounaojam Riya Devi, aged about 20 years, S/o Th. Tarunkumar Singh.

……. All of Keishampat Leimajam Leikai, P.S. & P.S. Imphal, Imphal West District, Manipur-795001.

2. Shri Thounaojam Bira Singh, aged about 85 years, S/o (L) Th. Hera Singh of Keishampat Leimajam Leikai, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

…. *Principal Respondent/s*

3. Shri Thounaojam Irabot Singh, aged about 80 years S/o (L) Th. Hera Singh of Utlou Mayai Leikai, P.O. &

P.S. Nambol, Bishnupur District, Manipur- 795126
now died by his LRs:

(a) Smt. Thounaojam (O) Memcha Devi, aged about 75 years, W/o (L) Irabot Singh of Utlou Mayai Leikai, P.O. & P.S. Nambol, Bishnupur District, Manipur-795126.

(b) Smt. Mayengbam Ongbi Thounaojam Ningol Satyamala Devi, aged about 49 years, W/o M. Premananda Singh of Kwakeithel Thokchom Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur-795008.

(c) Smt. Thounaojam Ningol R.K. Ongbi Pritammala Devi, aged about 44 years, W/o R.K. Deepak Singh of Paona Bazar, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

(d) Shri Thounaojam Ningol Potsangbam Ongbi Ritammala Devi, aged about 42 years, W/o P. Surjit Singh of Palace Compound (near Thangapat), P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

(e) Shri Sushil Thounaojam, aged about 40 years, S/o (L) Irabot Singh of Utlou Mayai Leikai, P.O. & P.S. Nambol, Bishnupur District, Manipur – 795126.

(f) Shri Rishikanta Thounaojam, aged about 38 years, S/o (L) Irabot Singh of Utlou Mayai Leikai, P.O. & P.S. Nambol, Bishnupur District, Manipur – 795126.

…. *Proforma Respondent/s*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the applicant/s	:	Mr. T. Rajendra, Advocate
For the respondent/s	:	Mr. N. Ibotombi, Sr. Advt.
		Mr. A. Romen, Advocate
		Mrs. Geetarani Takhellambam, Advocate
Date of hearing	:	06.12.2019
Date of Judgment & Order	**:**	**22.01.2020**

JUDGMENT & ORDER
(CAV)

[1] This petition has been filed by the petitioners under Section 5 of the Limitation Act seeking to condone the delay of 221 days in filing the Regular First Appeal preferred against the decree and judgment dated 29.04.2017 passed in O.S. No.34 of 2008 on the file of the Civil Judge, Senior Division, Imphal West.

[2] The petitioners are the plaintiffs and the respondents are the legal heirs of the original defendants 1 and 2 in the suit.

[3] The petitioners have filed the instant petition being M.C. (RFA) No.1 of 2019 seeking to condone the delay of 221 days in filing the appeal stating that they have full trust, belief

and confidence to their Advocate, who appeared before the trial Court, however, he has not conducted the case properly. Surprisingly, on 11.04.2018, the Bailiff of the Court along with the officials of the office of the Sub Deputy Collector, Imphal West and also the police personnel came to the suit land for eviction of the petitioners on the basis of the order dated 05.04.2018 passed in Execution Case No.18 of 2017/5 of 2017.

[4] On an enquiry, the petitioners came to be know that the suit filed by them was dismissed and the case was proceeded against them ex parte in respect of the counter claim made by the principal defendants and finally, the learned Judge passed judgment and decree on 29.4.2017. Unfortunately, passing of the judgment dated 29.4.2017 was never made known to the petitioners by their previous counsel till they received summons on 15.6.2017 in the Execution Case. After receiving the summons in the Execution Case, the petitioners having their faith and confidence to the said Advocate fully complied with all the directions given by him. On the further advice of the said Advocate, on 17.4.2018 the petitioners have instituted the appeal against the judgment dated 29.4.2017 along with application for condonation of delay. However, the petitioners become doubtful

of the nature and conduct of their counsel Mr. Ch. Momon Singh and asked him to give no objection so that they could engage another counsel. After discovering the manner and nature of the Advocate who treated them and handled their case, the petitioners have lodged a complaint before the Bar Council of Manipur against him.

[5] After engaging a new counsel and on further discussing the case with their new counsel, the petitioners discovered that the Learned District Judge, Imphal East has no jurisdiction to entertain the appeal as well as the delay condonation petition, as the Learned District Judge has jurisdiction to entertain an appeal against a decree passed in the suit, the value of which does not exceed Rs.50,000/-. The suit of the petitioners has been valued at Rs.50,100/- and the counter claim of the defendants 1 and 2 has been valued at Rs.5,50,000/-. Thereafter, the petitioners have filed petition seeking to withdraw the delay condonation petition and the appeal papers from the Learned District Judge, Imphal East. By an order dated 27.3.2019, the Learned District Judge, Imphal East, permitted the petitioners to withdraw the delay condonation petition and the appeal papers.

[6] According to the petitioners, the period spent by them is very much required to be excluded for filing the present appeal before this Court. In fact, it is a period of 344 days the petitioners were pursuing the matter before the Learned District Judge, Imphal East. The petitioners came to know the judgment and decree dated 29.4.2017 only after receiving summons in the Execution Case. Apart from this, the petitioners 1 and 2 were also having serious medical problems requiring constant medical treatment. The petitioners through their new counsel applied certified copy of the impugned judgment on 7.2.2019 and obtained the same on 4.4.2019. In the facts and circumstances stated above, the petitioners have sufficient cause for not preferring the appeal within the prescribed period. After deducting the time taken for obtaining certified copy of the judgment dated 29.4.2017 and the period of 90 days for filing the appeal, there is a delay of 221 days in filing the present appeal. The delay is neither willful, nor wanton. Hence, prayed for condonation of the delay of 221 days in filing the appeal.

[7] The respondents have filed counter stating that the blame made against Mr. Ch. Momon Singh, Advocate has not been taken in Judicial Miscellaneous Case No.2 of 2018 filed before the Ld. District Judge, Imphal East and without any basis and in order to get favourable order from this Court, the petitioners have lodged complaint against their counsel before the Bar Council of Manipur. It is stated that Judicial Miscellaneous Case No.2 was filed by another counsel and not

by the previous counsel who conducted the original suit. Despite knowing the fact that the Ld. District Judge, Imphal East has no jurisdiction to entertain the appeal, the petitioners have filed Regular First Appeal and Judicial Miscellaneous Case No.2 of 2018 before the Learned Judge, Imphal East. The petitioners have intentionally taken for about 2 months in obtaining the certified copy of the judgment. The statutory period of 90 days for filing the appeal cannot go separately, as the same has to be included within the period during which the petitioners pursued the matter before the Ld District Judge, Imphal East. The petitioners have not explained the delay properly and hence, prayed for dismissal of the petition.

[8] The learned counsel for the petitioners submitted that their counsel has not informed the suit proceedings and also passing of decree and judgment in the suit on 29.4.2017 by closing the evidence of plaintiffs and examining the witnesses on the side of the defendants. He would submit that the petitioners came to know the judgment dated 29.4.2017 only when they received summons in the Execution Case No. 18 of 2017, which was filed by the defendants 1 and 2 for eviction of the petitioners from the suit land. Thereafter, the petitioners contacted their

Advocate and on 17.4.2018, they have filed the appeal with delay condonation petition being Judicial Miscellaneous (Condonation) Case No.2 of 2018 before the Ld. District Judge, Imphal East.

[9] The learned counsel further submitted that since the petitioners have doubt over their Advocate, they asked their Advocate to give no objection to engage some other counsel. Accordingly, their Advocate has given no objection certificate. Since their previous Advocate has not handled the case in proper manner, the petitioners gave a complaint against him before the Bar Council of Manipur.

[10] The learned counsel further submitted that after engaging the new counsel and after discovering the fact that the Ld. District Court, Imphal East has no jurisdiction to entertain the said appeal and the delay condonation petition, the petitioners have filed petition being Judicial Miscellaneous Case No.10 of 2019 to withdraw the appeal. By an order dated 27.3.2019, the Ld. District Judge, Imphal East, permitted the petitioners to withdraw the delay condonation petition as well as the appeal with liberty to file afresh before the appropriate Court. Thereafter,

the petitioners have filed the present appeal before this Court with delay condonation petition.

[11] The learned counsel argued that the period from 17.4.2018 to 27.3.2019 is the time period taken in the proceedings being Judicial Miscellaneous (Condonation) Case No.2 of 2018 before the Ld. District Court, Imphal East, having no jurisdiction over the matter with due diligence. Therefore, the said period is very much required to be excluded for filing the present appeal before this Court and hence, the petitioners have filed the present petition seeking to condone the delay of 221 days in filing the appeal after excluding the aforesaid period spent before the Ld. District Court, Imphal East.

[12] The learned counsel added that both the petitioners having serious medical problems and are taking continuous treatment and there was no willful lapses or negligence on their part in filing the appeal with a delay. In fact, the petitioners on their part have taken all the required steps as responsible litigants and therefore, the delay has not been caused due to their lapses and negligence and thus prayed for condonation of the delay.

[13] Per contra, the learned counsel for the respondents submitted that the petitioners have not explained each and every day delay and in the earlier occasion, the petitioners, knowingly,

approached the wrong Court. He would submit that there is no truth in respect of the blame made against their Advocate. Only to protract the proceedings and to give hardship to the respondents, the petitioners have filed the present petition. The number of days calculated by the petitioners is also not correct and in fact, the delay is more than 221 days. He would submit that since the petitioners have not shown sufficient cause for condoning the delay, the present petition is liable to be dismissed.

[14] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[15] The petitioners have filed the suit being O.S.No.34 of 2008 for declaration to declare that plaintiffs 1 and 2 are the joint owners and possessors of the suit land; declare that the sale deed dated 5.9.2003 executed by the proforma third defendant in favour of plaintiffs 1 and 2 is valid; declare that the orders dated 22.10.1997 and 7.11.1997 passed by the Assistant Survey and Settlement Officer are valid and for perpetual injunction restraining the defendants 1 and 2 and their men and

agents from committing any illegal acts of trespass into the suit land and for costs.

[16] In the suit, the defendants 1 and 2 have filed counter-claim seeking to declare that defendant No.2 is the owner of the suit land; declare that the sale deed dated 5.9.2003 is null and void; recovery of the suit land and building by evicting the plaintiffs and for mesne profits for a sum of Rs.14,000/- per month with effect from the date of the suit till eviction.

[17] Before the trial Court, the first plaintiff filed his proof affidavit as P.W.1 and since the plaintiffs have failed to produce other PWs, the trial Court closed the evidence on the side of the plaintiffs. Thereafter, defendants' side witnesses were examined. Based upon the evidence produced by the defendants, the trial Court decreed that the second defendant is the owner of the suit land and the plaintiffs are liable to be evicted from the suit land, thereby dismissed the suit filed by the petitioners herein.

[18] Aggrieved by the dismissal of the suit, the petitioners/plaintiffs have preferred appeal before the Ld. District Judge, Imphal East with a delay of 322 days in filing the appeal. Finding that appeal would not lie before the District Court, Imphal

East, the petitioners themselves have filed petition being Judicial Miscellaneous Case No.10 of 2019 to permit the appellants to withdraw the appeal along with delay condonation petition. By the order dated 27.03.2019, the Ld. District Judge, Imphal East allowed Judicial Miscellaneous Case No.10 of 2019, thereby permitting the petitioners to withdraw the condonation petition with liberty to file afresh as there is formal defect of filing the proposed appeal in the proper forum. After withdrawal, the petitioners have presented the appeal papers with delay condonation petition being MC (RFA) No.1 of 2019.

[19] The ground on which the petitioners seeking to condone the delay in filing the appeal is that they have no knowledge about the dismissal of the suit and their counsel has not conducted the case in proper manner and allowed the suit for dismissal. Moreover, the dismissal of the suit has not been intimated to the petitioners. According to the petitioners, they have good case on merits and the judgment of the trial Court affects their right in the property in question. Therefore, the delay has to be condoned and the appeal has to be numbered.

[20] Placing reliance upon the decision in *Collector*, *Land Acquisition*, *Anantnag and another* v. *Mst.Katiji* and others,

reported in AIR 1987 SC 1353, the |earned counsel for the petitioners submitted that the legislature has conferred the power to condone the delay by enacting Section 5 of the Limitation Act in order to enable the Courts to do substantial justice to the parties by disposing of matters on merits. In the case on hand, the petitioners have good case on merits and they have also explained the reason for the delay.

[21] In *Mst. Katiji*, supra, the Hon'ble Supreme Court held as follows:

> *"3. The legislature has conferred the power to condone delay by enacting Section 5 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:*
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> *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 step motherly 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. Appeal is allowed accordingly. No costs."

[22] The learned counsel for the petitioners has also placed reliance on the decision of the Hon'ble Supreme Court in the case of *N. Balakrishnan v. M. Krishnamurthy*, *reported* in *AIR 1998 SC 3222* and submitted that length of delay is no matter, acceptability of the explanation is the only criterion. The learned counsel also submitted that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. Therefore, in the present case, though the delay is length, since the petitioners have explained the delay, exercising the powers, the delay has to be condoned.

[23] In N.Balakrishnan, supra, the Hon"ble Supreme Court held:

> *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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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 untrammeled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

11. Rule of limitation are not meant to destroy the right 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. S0 a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. 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 putt to litigation). Rules of limitation are not meant to destroy the right 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."

[24] On the other hand, placing reliance upon the decision in the case *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others*, *reported in (2013) 12 SCC 649,* the learned counsel for the respondents contended that even if sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable and proper conduct of the party. In the instant case, the alleged cause shown by the petitioners is not acceptable.

[25] Relying upon the decisions of the Hon'ble Supreme Court viz., *Mst. Katiji and N.Balakrishnan*, supra, in *Esha Bhattacharjee*, supra, the Hon'ble Supreme Court held as under:

"12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others, (2010) 8 SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram

Charan, AIR 1964 SC 215 and Katari Suryanarayana v. Koppisetti Subba Rao, (2009) 11 SCC 183 and stated thus:

> *"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.*
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> *26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."*

13. Recently in Maniben Devraj Shah v. Municipal

Corporation of Brihan Mumbai, (2012) 5 SCC 157, the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patll, (2001) 9 SCC 106, wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:

> *"23. What needs to be emphasized is that even though .a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.*
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> *24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay."*

Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14. In B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693, the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise in justice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

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

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a Significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

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

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

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

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

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

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

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

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

[26] The petitioners ought to have filed appeal within a period of 90 days from the date of judgment of the trial Court, but they have not filed the appeal beyond the period of 90 days before the Ld. District Judge, Imphal East, which is, admittedly, a wrong forum. On 17.4.2018, the petitioners have filed the appeal along with delay condonation petition being Judicial Miscellaneous (Condonation) Case No.2 of 2018 and there was no explanation given by the petitioners in the said delay condonatlon petition. After knowing the wrong forum, the petitioners have sought permission of the Court to withdraw the appeal papers and delay condonation petition with liberty to file the appeal before this Court. Thereafter, the petitioners have filed the appeal before this Court with delay condonatlon petition stating that there was only 221 days delay occurred in filing the appeal after excluding the period spent by them before the District Court, Imphal East. This, in fact, is not acceptable as the suit was dismissed on 29.4.2017. It is seen that the allegation against their previous counsel, who has not informed them about the trial proceedings; no knowledge about the dismissal of the suit and they came to know the dismissal of the suit only when they received summons in the Execution Case are all for the purpose of filing this petition. Moreover, the allegations of the

petitioners have not been substantiated by way of proof. Time and again, the Hon'ble Apex Court directed the parties to give proper explanation for each and every day delay. But the reasons given by the petitioners in the present case is not proper and also not acceptable.

[27] It is settled legal principle that law of limitation is founded on public policy not meant to destroy rights of parties, but to see that the parties do not resort to dilatory tactics. Likewise it has been held that liberal approach in considering an application under Section 5 of the Limitation Act should not override the substantial law of limitation and no premium can be given for lethargic attitude or utter negligence.

[28] Bearing these settled legal principles in mind, if the case on hand is examined, the only answer that could be given is that the plea of the petitioners lacks bona fide. Thus, the petitioners having been guilty of gross negligence and laches, this Court has no hesitation to hold that the petitioners have not shown sufficient cause for condonation of delay.

[29] Parties to be vigilant and sensitive on the proceedings of the Court and when the case was in the part heard stage, it is

the duty of the parties to follow the conduct of the case and contact their Advocate also to know about the stage of the case. In the case on hand, the petitioners have failed to follow the proceedings because of their lethargic attitude.

[30] It is well settled law that the length of the delay is not material, but whether the delay has been sufficiently explained has to be looked into. In the present case, as stated supra, the explanation sought to be given by the petitioners is not convincing and that there was no sufficient cause for condoning the extraordinary delay in filing the appeal. Moreover, the petitioners have not calculated the exact delay which has happened in filing the appeal and in fact, they sought to exclude the period which were spent before the Ld. District Judge, Imphal East as well as filing of copy application and the judgment made ready etc., which cannot be entertained. If such calculation is entertained, it would be a bad precedent.

[31] Considering the over all aspects of the matter, this Court Finds that there was no sufficient cause for the delay and in fact, the petitioners are lethargic in prosecuting their case and since the delay is willful, the same cannot be condoned.

[32] In the result, the petition is dismissed. No costs.

JUDGE

FR/NFR

-Larson

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