

3. It has been averred in paragraphs 1 and 2 of the application that the daughter-in-law of the applicant/appellant caused disappearance of certified copy of the impugned judgment and decree and she took possession of the dwelling house of the

applicant/appellant. He had, therefore, to apply again on 11.02.2019 for obtaining the certified copy. The daughter-in-law of the applicant happened to be a Special Public Prosecutor. She filed a case under Section 498-A of the Indian Penal Code. The applicant had, therefore, to remove himself from the town due to apprehension of arrest. The applicant, therefore, could not approach his Advocate in time to file the Second Appeal. The application is supported by an affidavit.

4. Learned counsel for the respondent would submit that the reasons given in the application are not correct. The applicant has not explained delay of each and everyday.

5. Since the averments in the application are supported by affidavit, the case propounded therein is relied upon.

6. The Apex Court in the case of *Collector, Land Acquisition Anantnag and another vs. Mst. Katiji and others* reported in *AIR 1987 SC 1353*, has observed thus:-

"3. The legislature has conferred the power to condone delay by enacting S.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:-

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."

7. The dispute pertains to immovable property. For the reasons given in the application and in view of the observations of the Apex Court in the case of ***Collector, Land Acquisition Anantnag and another (supra)***, the application is

allowed in terms of prayer clause (B), subject of payment of costs of Rs.3,000/- (Rupees Three Thousand).

[R.G. AVACHAT, J.]

KBP