

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.1311 OF 2022
IN
FIRST APPEAL STAMP NO.8742 OF 2022

Sulochana w/o Gangadhar Patil and others

Vs.

The State of Maharashtra, Through Collector, Wardha and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. M. Thakare, Advocate for applicants/appellants.

Ms. T. Udeshi, AGP for respondent Nos.1 and 2.

Mr. M. I. Dhattrak, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 24/02/2023
PRONOUNCED ON : 20/03/2023

1. By preferring the present application, the applicants are seeking condonation of delay which is caused in preferring the First Appeal.

2. The short question arising for consideration in this application is whether there is sufficient and reasonable grounds for condonation of delay within the meaning of Section 5 of the Limitation Act, so as to extend the period of limitation of an appeal.

3. The brief facts required to be stated for deciding the questions are as follows:

The applicants have preferred the appeal

against the Judgment and Award passed by the Ad-hoc District Judge-1, Wardha in Land Acquisition Case No.39/1991 dated 11.04.2007.

4. As per the contention of the applicants, the land acquisition proceedings were started on the request of Municipal Council, Wardha, vide its letter No.MC/WR/PWD/3665/85 dated 15.02.1985 for acquisition of private land for Government offices and staff quarters and for garden park. The applicants are the owners of land bearing Survey No.1/2 total area 1.74. H.R. situated at Mouza Palakwadi, Wardha. Out of the said land, the land admeasuring 0.52 H.R. was acquired for Government offices and staff quarters for garden park. The property was purchased by applicant No.1 Sulochana Gangadhar Patil, Smt. Gangabai wd/o Keshavrao Chaudhari, Shri Dongar Deoram Bhangale, Smt. Malti w/o Deorao Bhangale, Waman Sitaram Patil from one Chintaman Shivram Vaidya and others. On 08.04.1992, Waman Sitaramji Patil executed his last will and bequeathed his undivided shares in respect of field Survey No.1/2, new Survey No.15 situated at Ward No.2 along with other properties. Gangabai wd/o Keshavrao Chaudhari died on 20.09.1992 and executed her will and bequeathed her undivided share in the said survey number along with other properties in favour of her daughter Sulochanabai. Shri Dongar Deoram Bhangale and Smt. Malti Deoram Bhangale have relinquished their

rights in favour of Sulochana Gangadhar Patil and Gangadhar Wamanrao Patil. Thus, Sulochana Gangadhar Patil and Gangadhar Wamanrao Patil become absolute owner of the said property. As the Municipal Council has decided to acquire the property, the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred as "the Act") was issued on 14.11.1985 and notification under Section 6 of the Act was published on 07.08.1986. When the notices were issued to the applicants, she submitted her claim in respect of compensation to be awarded vide her statement dated 16.12.1985 and 09.03.1986. The Special Land Acquisition Officer had declared the award and declared the compensation. As the Special Land Acquisition Officer had not considered the non-agriculture potential and granted inadequate compensation, therefore the applicants preferred the reference petition before the Reference Court for enhancement of the compensation.

5. The Reference Court has recorded the relevant evidence and awarded compensation to the applicants of Rs.2,51,769/- together with interest at the rate of Rs.9% per annum for first year and thereafter at the rate of Rs.15% per annum from 05.08.1989 till realization of the entire amount.

6. Being aggrieved and dissatisfied with the

Judgment of the Reference Court, respondent No.3 i.e. Municipal Council, Through Chief Officer, Wardha had preferred the appeal bearing First Appeal No.638/2007. The applicants received the notice in respect of First Appeal No.638/2007. As per the contention of the applicants, thereafter they contacted the local Advocate Mr. G. K. Nagre who was practicing at Nashik and handed over entire papers to him. He handed over the said papers to the Counsel at Nagpur. The Counsel at Nagpur had prepared cross-objection and application for grant of exemption from Court fees for filing the cross appeal. The Power of Attorney holder had sworn the application for the delay and the cross-objection on 11.02.2009. After verifying both the applications as well as the cross-objection, the applicants were under the *bona fide* impression that their Counsel had filed the cross-objection with the application of exemption of Court fees, however, the same was not acted upon by their Counsel.

7. It is further the case of the applicants that, on 20.09.2019 this Court upheld the judgment in Land Acquisition Case No.39/1991 and dismissed the First Appeal No.638/2007. This Court has also granted the permission to the applicants to withdraw the remaining amount. However, under the *bona fide* impression that their Counsel would have appeared, applicants failed to appear. The local Counsel in Nashik was also expired in

the year 2014. Thus, the applicants had no mode to contact the Counsel appointed in Nagpur. It is further contended that in the meanwhile, the applicants and their Power of Attorney holder shifted their residence. Due to the aforesaid reasons, the applicants and the Counsel appearing before this Court were unable to communicate.

8. In the year 2020, the Power of Attorney holder was able to procure the mobile number of their Counsel in Nagpur. However, it was the Power of Attorney holder contacted and enquired about the proceeding and informed that the matter has been dismissed and the applicants are entitled to withdraw the remaining amount. It was further informed that, he had stopped practicing before this Court. Therefore, the applicants were requested to take the documents and to engage another Counsel to withdraw the remaining amount. At the relevant time, the whole Nation was hit by Covid-19 pandemic, which led to a lockdown. Due to the pandemic situation, the Power of Attorney holder was not able to travel which caused the delay in preferring the present appeal. Thus, as per the contention of the applicants is that, the local Counsel practicing in Nashik was expired. Secondly, the applicants changed their address. Thirdly, the Counsel engaged by them stopped practicing and the whole Nation was hit by Covid-19 pandemic. Therefore, the

applicants could not file the cross-objection.

9. In April 2022, the Power of Attorney holder contacted and handed over the papers to the present Counsel for preparing the application for withdrawal of the remaining amount in First Appeal No.638/2007. At the relevant time it revealed to the present Counsel that, though earlier Counsel prepared the cross-objection and application for examination of Court fees on Cross- objection, but he has not filed. After perusal of the record, it revealed that the cross-objection has not been filed, therefore Counsel and the Power of Attorney holder immediately approached to the local Counsel at Wardha and applied for certified copies for taking steps to file the present appeal. The application for certified copies was made on 19.04.2022 and the same was received on 21.04.2022 in Land Acquisition Case No.39/1991. After going through the papers, the Power of Attorney holder approached the Counsel and handed over the papers for presenting the appeal.

10. It is further contention of the applicants that the compensation awarded by the Reference Court, for the land of the applicants is liable to be enhanced. The applicants had produced various documents which are not considered by the Reference Court. The land of the applicants is of non-agriculture potential. However, the Reference Court had not considered the same and

granted very meager amount, which needs to be re-appreciated and enhanced amount of compensation is to be paid to the applicants. It is contention of the applicants that delay caused is not intentional one. The applicants as well as their Counsel was not having knowledge that the earlier Counsel did not file cross-objection. The applicants are ready to waive the interest for the delayed period. No prejudice would be caused, if delay is condoned. It is submitted by the learned Advocate that while considering the delay application, liberal approach should be adopted. He also referred the Judgment of **Imrat Lal and others Vs. Land Acquisition Collector** reported in **2014 (9) SCALE 446** and **Ningappa Thotappa Angadi (Dead) through LR. Vs. The Special Land Acquisition Officer and Another** (2019 SCC OnLine SC 1611). Wherein the huge delay was condoned. He further place reliance of **Ram Chander and others Vs. Union of India and another** reported in (2020) 15 SCC 491, wherein the delay of 6593 days was condoned. It is submitted on behalf of the applicants that, in view of the facts and above circumstances, delay of 4730 days be condoned.

11. Said application is strongly opposed by the respondent No.3 by filing reply. As per the contention of the respondent No.3 that, applicants have filed the present first appeal under Section 96 of the Code of Civil Procedure read with Section 54 of Land Acquisition Act,

1894 for setting aside the Judgment and Award dated 11.04.2007 passed by the Ad-hoc District Judge – 1, Wardha in Land Acquisition Case No.39/1991, after delay of 4730 days. In the present case condoning the delay is nothing but an abuse of process of Court as well as law and such delayed claim cannot be allowed. It is further contention of the respondent No.3 that, the reasons given are not supported by any material evidence nor the date and particulars of events has been given chronologically. The *bona fide* impression as contended about filing of the application as well as cross-objection by the Counsel of the applicants is totally misconceived. As per the respondent No.3 the contention that death of the local Counsel in Nashik took place in the year 2014 is also not supported by any documents. The name of the Counsel at Nagpur is not at all disclosed nor the date of stopping of practice by the said Counsel is stated and hence the same cannot be considered. The only reason of pandemic is stated without explaining the time and period and hence same cannot be considered. It is further submitted that there is no material placed on record to demonstrate as to how Power of Attorney holder contacted to the present Counsel in the month of April 2022. The applicants were party to the First Appeal No.638/2007 and therefore, they cannot claim the benefit of the fact that they were not having knowledge, as they were very well party to the said appeal and was represented and contested the

appeal on merits. The copy of the oral Judgment in First Appeal No.638/2007 shows that they were very well represented by the Counsel.

12. It is further submitted that it is a settled principle of law that while seeking condonation of delay, the applicants have to explain the delay of each and every date and has to justify the reasons about the delay caused with the relevant material to substantiate the submissions, but in the present case, the delay has not been explained at all and on the basis of vague submissions and the statements which are incorrect, the application deserves to be rejected.

13. Heard learned Advocate Mr. Thakare for the applicants. He reiterated the said contentions and submitted that the law is settled regarding the delay condonation application. The applicants in detail narrated the reasons for the condonation of delay. It is specifically stated by the applicants that their local Counsel has engaged the Advocate at Nagpur. The Advocate at Nagpur had prepared the cross-objection but same was not filed. This fact was not within the knowledge of the applicants and therefore, they have not approached to their Counsel. He further submitted that the local Counsel in Nashik had expired in the year 2014, thereafter applicants and their Power of Attorney holder also shifted the residence. In the year 2020, the Power

of Attorney holder procured the mobile number of the engaged counsel in Nagpur and contacted. At the relevant time, he came to know that appeal filed by the respondent No.3 was dismissed and the applicants are entitled to withdraw the remaining amount. It was further informed by the said counsel that he had stopped the practice, therefore they have engaged another Counsel for withdrawal of the remaining amount. Thus, as per the contention of the learned Advocate that there is sufficient and reasonable cause for condonation of delay and delay is not intentional one. In the interest of justice, delay be condoned.

14. In support of the contention learned Advocate Mr. Thakare place reliance on **Imrat Lal and others Vs. Land Acquisition Collector** (supra). Wherein Hon'ble Apex Court observed that 'We can take judicial notice of the fact that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the court should adopt a

liberal approach and either grant time to the party to file a better affidavit to explain delay or *suo motu* take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.'

15. He further placed reliance on **Ram Chander and others Vs. Union of India and another** (supra) wherein it is held that, if a similarly situated landowner has received higher compensation. The High Court should have allowed the benefit of such higher compensation to the appellants, if required, by making it clear that for the period of delay no interest shall be payable to the appellant landowners. The above course of action has, in fact, been adopted by the Supreme Court in several other cases where compensation on a par has been awarded minus interest for the period of delay in approaching the Court.

16. He submitted that here in the present case also there are just and sufficient reason for condonation of delay and hence, application deserves to be rejected.

17. Per contra, learned Advocate Mr. M. I. Dhatrak, for the respondent No.3 opposed the application on the ground that the applicants were very well aware about the pendency of the appeal bearing

No.638/2007 which is filed by the respondent No.3 – Municipal Council. The applicants are served with the notice and they have engaged their Advocate. However, the applicants have not preferred any cross-objection diligently. He submitted that there is absolutely no sufficient reasons and delay is not properly explained by the applicants.

18. Learned Advocate Mr. Dhattrak submitted that the CIS form shows that the First Appeal No.638/2007 was pending and present applicants are represented by Advocate Mr. Thakare. He also placed on record the order passed by this Court on 01.07.2009 in **C.A. No.1540/2009 in First Appeal No.638/2007 (Municipal Council Vs. State of Maharashtra and others)** which shows that the applicants i.e. respondent Nos.3 and 4 in First Appeal No.638/2007 approached to this Court for withdrawal of the amount deposited in the Court furnishing the solvent surety to the satisfaction of this Court. At the relevant time also, the applicants were represented by Advocate for withdrawal of the amount. In the appeal, present applicants were the respondent Nos.3(A) to 3(D). Thus, the applicants were brought on record in First Appeal bearing No.638/2007 and they were very well represented by the Counsel. He further referred the statement made by the present applicants which shows that in the year 2020 also they approached to this Court for withdrawal of the amount. The Power

of Attorney holder contacted and inquired the proceeding and it was informed to him that the appeal has been dismissed and the applicants are entitled to withdraw the remaining amount. Thus, not only the documents on record, but the various orders passed by this Court show the representation of the applicants before the Court. Though, they are represented by their Counsel, the applicants were not diligent to file the cross-objection and now after ten years present application is filed for condonation of delay without any sufficient reason and hence delay application deserves to be rejected.

19. In support of his contention, he placed reliance on **Basawaraj and another Vs. Special Land Acquisition Officer** reported in (2013) 14 SCC 81, wherein the Hon'ble Apex Court held that sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the words "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there

was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose.

20. He further place reliance on **Sridevi Datla Vs. Union of India and others** reported in (2021) 5 SCC 321, wherein also it is held that sufficient cause in cases where delay is inordinate, consideration of prejudice to other side will be a relevant factor while condoning delay. He further placed reliance on **Ningappa Thotappa Angadi (Dead) through LR. Vs. The Special Land Acquisition Officer and another** (supra). He further relied upon **Huchanagouda Vs. Assistant Commissioner and Land Acquisition Officer and another** reported in (2020) 19 SCC 236. Wherein it is by referring the Judgment of **Dhiraj Singh Vs. State of Haryana** reported in (2014) 14 SCC 127 has considered the issue relating

to condonation of delay in Land Acquisition matters and the manner in which the equities are to be balanced. It is held that equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds. The Hon'ble Apex Court further laid down the principles regarding condonation of delay particularly in land acquisition matters and laid down the following principles:

“(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 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

21. Learned Advocate Mr. Dhattrak, submitted that in the present case though applicants received the notices of the appeal filed by the respondent No.3 bearing No.638/2007, no cross-objection was filed. The record shows that the applicants were constant in touch with their Counsel and engaged the Counsel, withdrawn the amount but not filed the cross-objection. Even the Power of Attorney holder of the applicants approached to the Counsel in the year 2020. At that time also, no appeal is filed. There is complete negligence on the part of the applicants. The grounds raised in the application are vague, not sufficient cause within the meaning of Section 5 of the Limitation Act, and therefore delay application deserves to be rejected.

22. The factual aspects in the present application that the applicants are the legal heirs of Sulochana Gangadhar Patil is not disputed. Their property was acquired by the respondent No.3 by issuing notification under Section 4 of the Act dated 14.11.1985

and under Section 6 of the Act dated 07.08.1986 is also not disputed. The applicants submitted claim in respect of the compensation before the Land Acquisition Officer by making statements dated 16.12.1985 and 09.03.1986 is also not disputed. Reference filed by the applicants was allowed partly by passing Judgment on 11.04.2007 by Ad-hoc District Judge-1, Wardha. Being aggrieved with the said Judgment and Award, respondent No.3 Municipal Council preferred First Appeal bearing No.638/2007. The notices of the said appeal are duly served on the applicants. As per the contention of the applicants, they have engaged the local Counsel Advocate Mr. Nagre and he had handed over the papers to the local Counsel at Nagpur and they were under impression that Counsel had filed the cross-objection. The facts on record further shows that the applicants appeared in the said appeal, through Advocate Mr. Thakare. The case details obtained from CIS System shows that First Appeal No.638/2007 was pending in the Court on 27.08.2007. At the relevant time, Municipal Council was represented by their Counsel as well as respondent No.3 and 3(B) were also represented by Advocate Mr. Thakare. Said appeal was disposed of on 20.02.2019. During the pendency of the appeal, the applicants approached to this Court and filed Civil Application No.1540/2009 in First Appeal No.638/2007 for withdrawal of the amount. This Court has permitted the applicants i.e. respondent Nos.3 and 4 to withdraw

$\frac{1}{4}^{\text{th}}$ of the amount deposited in this Court. Thus, the material on record sufficiently shows that applicants were very well represented in the appeal filed by the respondent No.3. The applicants further approached to this Court for withdrawing the amount but not filed any cross-objection. It is submitted on behalf of the applicants that the applicants were under *bona fide* impression that their Counsel had filed the cross-objection however, the same was not filed. The copies of the cross-objection and application of delay dated 11.02.2009 are placed on record. At the relevant time, in the appeal the applicants were very well represented by Advocate Mr. Thakare. Thus, the contention of the applicants that they were not aware about the Counsel who was engaged by their local Counsel is not acceptable, as they were appearing in the appeal and also filed an application of withdrawal of the amount. Another ground raised is that the learned Counsel who was engaged by them i.e. Advocate Mr. G. K. Nagre expired in the year 2014. Prior to his death, the applicants approached to this Court for withdrawal of the amount and amount was withdrawn by them on furnishing surety. So, the contention of the applicants that they were not aware to whom to contact in Nagpur is also not sustainable. The third ground raised by the applicants is regarding the pandemic situation. The pandemic situation was started in the year 2020, before that the applicants approached to this Court preferred an

application for withdrawal of the amount. They have withdrawn the amount and fully aware about the pendency of the appeal, as they have engaged the Counsel Advocate Mr. Thakare.

23. In the above background, it is to be seen whether the grounds raised by the applicants is sufficient to condone the delay. The principles for dealing with application for condonation of delay are laid down by the Hon'ble Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors., MANU/SC/0932/2013**. The said principles are as follows:

(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.

(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 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.

To the aforesaid principles the Supreme Court 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 harboring 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, lackadaisical propensity can be exhibited in a non-challant

manner requires to be curbed, of course, within legal parameters.

24. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning delay. The petitioner could not take benefit thereof approaching Court at belated stage. While considering whether there is sufficient reason for condonation of delay or not, it is necessary to consider the principle laid down both the Hon'ble Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy (supra)**. The principles laid down *inter alia* at serial Nos.(v) and (vii) are material, and therefore it is reproduced. (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact. (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

25. The principle at serial No.(ix) The conduct, behavior 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.

26. It is well settled principle of law that, if some person has taken a relief approaching the Court just or immediately after the cause of action has arisen, other persons cannot take benefit thereof approaching the Court at the belated stage for the reason that they cannot be permitted to take the benefit of the order passed at the behest of some diligent person.

27. The question whether the proceeding taken out constitute sufficient cause within the meaning of Section 5 of the Limitation Act, so as to extend the period of limitation of the appeal, the sufficient reasons further to be considered. It is true that expression sufficient cause 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. The expression sufficient cause within the meaning of Section 5 of the Limitation Act, Order 22 Rule 9 of the Code of Civil Procedure as well as similar other provisions and the ambit of exercise of powers thereunder have been subject matter of consideration before the Hon'ble Apex Court on numerous occasions.

28. In the case of **The State of West Bengal vs. The Administrator, Howrah Municipality** and others (MANU/SC/0534/1971) while considering the scope of the expression sufficient cause within the meaning of Section 5 of the Limitation Act the Hon'ble Apex Court

laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction for want of *bona fide* is imputable to a party. In another case of **Sital Prasad Saxena (Dead) by LRs. Vs. Union of India and others** reported in (1985) 1 SCC 163, the Hon'ble Apex Court was dealing with the case when in a second appeal, appellant filed an application for substitution of legal heir with condonation of delay and setting aside abatement which was filed after two years by the heirs and the legal representatives was rejected on the ground that no sufficient cause was shown and the appeal was held to be abated. When the matter was brought before the Hon'ble Apex Court the appeal was allowed and the substitution was granted. It was observed once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. Inasmuch as in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party.

29. The expression "sufficient cause" within the meaning of Section 5 of the Limitation Act. Admittedly, 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 expression furnished would constitute sufficient cause or not will be dependent upon facts of each case. There cannot be a straight jacket formula for accepting or rejecting the explanation furnished for the delay caused in taking steps. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to

examine whether the mistake is *bona fide* or was merely a device to cover an ulterior propose.

30. Learned Advocate Mr. Thakare, placed his reliance in the case of **Ram Chander and others Vs. Union of India and another** (supra) wherein the delay of 6593 days was condoned. Wherein the Hon'ble Apex Court has considered that if a similarly situated landowner has received higher compensation, which fact the High Court had noted, the High Court should have allowed the benefit of such higher compensation to the appellants. Another Judgment **Imrat Lal and others Vs. Land Acquisition Collector and others** (supra) wherein the facts of the case shows that the appellants' land situated in Village Wazirabad, Tehsil and District Gurgaon. The Land Acquisition Collector passed an award dated 03.05.2000 and fixed the market value. Feeling this dissatisfied with the award of the Land Acquisition Collector, the appellants filed an application under Section 18 of the Act for determination of the amount of compensation. The Reference Court enhanced the compensation. A number of landowners filed appeals under Section 54 of the Act. After almost three years of the disposal of the other appeals, the appellants filed appeal and applied for condonation of delay 1110 days'. Said application was rejected. And while condoning the delay Hon'ble Apex Court held that it cannot be ignored that in identical matters the another

learned Single Judge had granted relief to the landowners by enhancing the compensation and this factor should not have been overlooked while deciding the application for condonation of delay.

31. In the present case, the applicants very well represented by the counsel, they have engaged their counsel and counsel was pursuing the appeal. Thereafter, the applicants through another counsel approached to this Court and filed Civil Application for withdrawal of the amount. From these facts, it can be very well inferred that the applicants were very well aware about the pendency of the appeal. However, they were not vigilant by making enquiry with the Advocate regarding progress of their matter when they can approach to the Advocate for withdrawal of the amount. Their contention that they were not aware whether cross-appeal/cross-objection was filed or not filed by the Counsel is unacceptable. When they approached to their Advocate for withdrawal of the amount, they should be vigilant by making an enquiry regarding their cross-objection. It appears there is complete inaction and negligence on the part of the applicants and the reason mentioned for the condonation of delay appears to be not reasonable one. The rules of limitation are not mean to disturb the rights of the parties. They are mean to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal

remedy is to repair the damage cost to them. The law of limitation fixes a period of some limitation for such legal remedy and if any person cannot avail the said remedy, then, he has to show his *bona fide* and diligence. After due diligence, if the person was restrained or could not file the appeal to seek further remedy, then it would be a sufficient cause, but when a person very well aware about the pendency of the litigation, he is approaching to the Court for other reliefs but not filing any application for getting the different type of remedy, then it is complete negligence of the such litigants. Lack of *bona fide* will not entitle the applicant for seeking condonation of delay. The concept of liberal approach has to be with reasonableness. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

32. On perusal of the ground urged by the applicants and the stand put forth by the non-applicants herein for condonation of delay are that the applicants were not aware whether the cross-objection is filed or not is not acceptable, in the light, the applicants have approached to the Court for withdrawal of the amount. In the light of the above said facts, the application deserves to be rejected.

33. In the above circumstances, application for delay condonation is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate