

19.03.2024

Sl. No.: 6

Court No.30

BM

CRR 537 of 2023

**Sri Padam Bahadur Sunuwar
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Sobhan Pathak.

For the State : Mr. Nirupam Dhali.

For the Opposite Party No. 2 : None.

1. Affidavit of service filed showing due serviced be kept with the record.
2. In spite of due service there is no representation on behalf of the opposite party no.2.
3. The present revision has been preferred against an order passed on 20.11.2019 passed by the learned Judicial Magistrate, 2nd Court, Durgapur in C.R. 865 of 2019 in Criminal Revision No.21 of 2020 before the learned Additional Sessions Judge at Durgapur along with an application under Section 5 of the Limitation Act. The learned Judge rejected the application under Section 5 of the Limitation Act and the revision on the ground that the said application is barred by limitation.
4. The order under revision is as follows:-

“Criminal Revision 21/2020

Order No.12 dated 26.09.2022.

The revisionist files hazira.

The opposite parties take no steps.

The petition under Section 5 of the Limitation Act is taken up for hearing.

Heard the learned advocate for the revisionist.

Perused the petition with other materials on record.

*The revisionist has challenged the order dated 20.11.2019 passed by the learned Judicial Magistrate, 2nd Court in connection with CR Case No.865 of 2019. The revisional application was presented on 28.08.2020. It is stated that after receiving summons the revisionist appeared before the learned Magistrate on 17.02.2020 and obtained bail. On 18.02.2020 he applied for certified copy of the order and obtained the same on 25.02.2020. **As lock down started from 23.03.2020 due to COVID 19 pandemic and subsequent non availability of public vehicle he could not consult his learned Advocates for filing the revision.***

*The revisionist has not specifically stated on which date the summons was served on him. **He has also not explained the delay between 25.02.2020 to 23.03.2020.***

*In this circumstances, **delay being not properly explained the petition is liable to be rejected.***

Hence, it is

Ordered

that the petition under Section 5 of the Limitation Act is rejected without cost.

The instant revision being time barred is dismissed.

Dictated & corrected by me.

Sd/-

*Additional Sessions Judge,
1st Court, Durgapur”*

5. The proceeding in the present case before the trial court is under Sections 452 /341 /323 /354 /382 /467 /471 /120B of IPC.
6. It appears that the learned Session Judge has held that the delay in the present case from 25.02.2020 to 23.03.2020 (27 days delay) has not been explained.
7. The Supreme Court in **Civil Appeal nos. 8183-8184 of 2013 (Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.)** on **13.09.2013** delivered a comprehensive judgment **on the point of limitation**. Justice Dipak Misra delivering the judgment on behalf of the Division Bench held:-

“5. Before we delve into the factual scenario and the defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

6. In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others (1987) 2 SCC 107 a two-Judge Bench observed that the legislature has conferred 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, for that is the life-purpose for the existence of the institution of courts. **The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations.** It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression “sufficient cause”.

7. In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142, Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.[3] ; Shakuntala Devi Jain v. Kuntal Kumari[4] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi[5] ; Lala Mata Din v. A. Narayanan[6] ; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. **Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.**

8. In O.P. Kathpalia v. Lakhmir Singh (dead) and others (1984) 4 SCC 66, the court was dealing with a fact- situation where the interim order passed by the court of first instance was an interpolated order and it was **not ascertainable as to when the order was made**. The said order was under appeal before the District Judge who declined to condone the delay and the said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set aside the orders impugned therein observing that **the appeal** before the District Judge **deserved to be heard on merits**.

9. In State of Nagaland v. Lipok AO and others (2005) 3SCC 752, the Court, after referring to **New India Insurance Co. Ltd. V. Shanti Misra (1975) 2 SCC 840**, **N. Balakrishnan v. M. Krishnamurthy AIR 1998 SC 3222**, **State of Haryana v. Chandra Mani (1996) 3 SCC 132** and **Special Tehsildar, Land Acquisition v. K.V. Ayisumma (1996) 10 SCC 634**, came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.

10. In this context, we may refer with profit to the authority in **Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another** (2010) 5 SCC 459, where a two-Judge Bench of this Court has observed that the **law of limitation is founded on public policy**. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably **advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate**.

11. In **Improvement Trust, Ludhiana v. Ujagar Singh and others** (2010) 6 SCC 786, it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that **each case has to be weighed from its facts and the circumstances in which the party acts and behaves**.

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, **P.K. Ramachandran v. State of Kerala** (1997) 7 SCC 556 and **Katari Suryanarayana v. Koppiseti 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.

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 Patil** (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.

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 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 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, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

Finally the Court held:-

*“The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from **N. Balakrishnan** (supra): -*

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.”

8. Criminal Appeal No. 7696 of 2021, Majji Sannemma

@ Sanyasirao vs. Reddy Sridevi & Ors. The Supreme Court held on 16 December 2021 while considering an application for condonation of delay of 1011 days held:-

“7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:

7.1 *In the case of **Ramlal, Motilal and Chhotelal** (supra), it is observed and held as under:*

*In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decreeholder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decreeholder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in **Krishna v. Chattappan**, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."*

7.2 *In the case of **P.K. Ramachandran** (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.*

7.3 *In the case of **Pundlik Jalam Patil** (supra), it is observed as under:*

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest

reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

7.4 In the case of **Basawaraj** (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of **Pundlik Jalam Patil** (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

9. Applying the law as laid down by the Court in the aforesaid decisions, the Court did not agree with the High Court in condoning the delay of 1011 days.

10. In the present case as discussed the petitioner has clearly explained showing sufficient cause for the delay

(due to the Covid-19 Pandemic). **The delay in the present case has been sufficiently explained and the cause shown is sufficient.** The facts and circumstances and the cause shown is prima facie bona fide and it appears that there was no negligence on the part of the petitioner. The delay in the present case calls for a **liberal delineation**. There does not appear to be any negligence from the conduct/behavior and the attitude of the petitioner as seen from the explanation of delay. **The scale of balance of justice weighs in favour of the petitioner.** Accordingly, considering the view of the Supreme Court as laid down in respect of considering an application for condonation of delay, the cause as shown is satisfactory and sufficient in respect of the delay and is thus accepted. **The delay is hereby condoned.**

- 11.** The application for condonation of delay in preferring the Criminal Revision No. 21 of 2020 before the learned Session Judge, Durgapur is thus allowed.
- 12. The revisional application being CRR 537 of 2023 is hereby allowed.**
- 13.** The order under revision dated 20.11.2019 passed by the learned Judicial Magistrate, 2nd Court, Durgapur in C.R. 865 of 2019 in Criminal Review No.21 of 2020 before the learned Additional Sessions Judge at Durgapur along with an application under Section 5 of the Limitation Act, **is hereby set aside.**

14. The learned Sessions Court is directed to hear the criminal revision being No.21/2020 as the said case stands admitted to file of the learned Additional Sessions Judge, Durgapur and the learned Judge is directed to hear the criminal revision in accordance with law and dispose of the same expeditiously within three months from the date of communication of this order.

15. All connected Applications, if any, stands disposed of.

16. Interim order, if any, stands vacated.

17. Copy of this order be sent to the learned Trial Court for necessary compliance.

18. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)