

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT No. 2481 Of 2023

With

CAN 1 of 2024

Mitali Kar (Sarkar)

-Versus-

The State of West Bengal & Ors.

For the Appellant : **Mr. Biswarup Biswas,**
Mr. Mojnu Sk,
Mr. Sk Morshed Ali,

For the State -Respondent : **Mr. Ayan Banerjee,**
Ms. Debapriya Chatterjee,

For the Respondent No. 3,4 & 5 : **Mr. Anupam Das Adhikary,**
Mr. Krishnendu Pau Chowdhuruy.

For the Union of India : **Ms. Rashmi Bothra**

Judgment on : **12.07.2024**

Prasenjit Biswas, J:-

1. The Key issue involved in this appeal is whether the learned Single Bench of this Court was justified in allowing the application for condonation of delay subject to payment of cost of Rs. 50,000/-.

2. Being aggrieved and dissatisfied with the impugned order passed by the learned Single Bench of this Court dated 14.12.2023 in connection with W.P.A 19320 of 2010 the present appellant has preferred this instant appeal.

3. Mr. Biswarup Biswas learned Counsel appearing on behalf of the appellant submitted that the learned Single Judge erred in law in allowing the application filed under Section 5 of the Limitation Act with a prayer for condonation of delay on condition of payment of cost of Rs. 50,000/- without going into the merits of the case of this appellant. It is further submitted that the Single Bench was not justified in imposing the cost of Rs. 50,000/- to the appellant for allowing the application for condonation of delay filed in connection with recalling the order of dismissal of the writ application dated 18.08.2017. As per submission of the learned Counsel the present appellant is not at all negligent in persuading the case which was pending before the learned Single Bench but unfortunately the said writ petition was dismissed for default without any fault attributed on the part of this present appellant and as such there is no question of imposing compensation .

4. It is submitted by the learned Counsel for the appellant that the learned Single Bench at the time of passing of the impugned order did not at all

consider the judgments rendered by the Hon'ble Apex Court in series of cases. Although the present appellant explained the delay in spite of that it has been observed by the learned Single Bench that the delay should have been explained in better way but the fact remains that as soon as this present appellant came to know about the fate of the writ application instituted by him he then and then contacted with his learned Advocate. Thereafter, the application was taken out for restoration of the said order of dismissal along with the application filed under section 5 of the Limitation Act with a prayer for condonation of delay but the learned Single Bench did not at all consider the said factum as stated by the present petitioner. It is further argued by the learned Counsel that Hon'ble Apex Court repeatedly held that substantial justice shall prevail over procedural law and delay in filing the application under Section 5 of the Indian Limitation Act shall be disposed of with liberal point of view but that guideline as initiated by the Apex Court has not been followed up by the learned Single Bench in passing the impugned order. It is submitted by the learned Counsel that imposing of cost of Rs. 50,000/- to the appellant will seriously prejudice the appellant as the appellant is not in a position to deposit the said amount. As such it is prayed by the learned Counsel that the order passed by the learned Single Judge may be modified to that extent.

5. Mr. Ayan Banerjee learned Counsel appearing on behalf of the state submits that there is no illegality or material irregularity in the impugned order. It is submitted that the Court has exercised his power of discretion in

the matter of allowing the application filed by the petitioner with a prayer for condonation of delay subject to payment of cost of Rs. 50,000/- to this appellant. At last learned Counsel leaves the matter upon the discretion of the Court to decide the issue involved in this appeal.

6. We have anxiously considered the submissions advanced by the learned Counsels for the parties as well as perused the impugned order passed by the learned Single Bench of this Court

7. While refusing to condone the delay of 5659 days in preferring an appeal, the Supreme Court had laid down eight principles by providing harmonious construction to Sections 3 and 5 of the Limitation Act, 1963 in case of **Pathapati Subba Reddy (Died) By L.Rs. and Ors Vs the Special Deputy Collector (LA)** reported in **2024 SCC OnLine SC 513**. The Supreme Court has explained some important points to be kept in mind regarding the law of limitation and condonation of delay. The Court while deciding the Special Leave Petition (SLP) preferred by the legal representatives of a man in a land acquisition case. mentioned the following principles:

- I. Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- II. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

III. The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

IV. In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

V. Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

VI. Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

VII. Merits of the case are not required to be considered in condoning the delay; and

VIII. Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the

delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

8. The Apex Court said that condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach.

“... it cannot be said that the facts or the reasons of getting the delay condoned are identical or similar. Therefore, we are unable to exercise our discretionary power of condoning the delay in filing the appeal on parity with the above order(s)”, it noted.

9. The Apex Court further said that the High Court did not find it fit to exercise its discretionary jurisdiction of condoning the delay and hence, there is no need of interfering with the discretion exercised by the court. First, the claimants were negligent in pursuing the reference and then in filing the proposed appeal. Secondly, most of the claimants have accepted the decision of the reference court. Thirdly, in the event the petitioners have not been substituted and made party to the reference before its decision, they could have applied for procedural review which they never did, it also noted. The Court, therefore, hold that there is no due diligence in pursuing the matter and that the High Court was justified in refusing to condone the delay in filing the appeal.

10. The Apex Court analysed the principles underlying the law of limitation, emphasizing the need for finality in litigation and the mandatory nature of Section 3. It discussed the discretionary power of courts to condone delay under Section 5, contingent upon the demonstration of “sufficient cause” by the appellant. The Court cited precedents to underscore the necessity of exercising caution in condoning delays, particularly when negligence or lack of due diligence is apparent. It emphasized that while the court may adopt a liberal approach, it should not disregard the statutory provisions or the need for substantial cause for delay.

Ultimately, the Apex Court upheld the decision of the High Court, reasoning that the claimants had failed to demonstrate sufficient cause for the delay. It highlighted their lack of diligence in pursuing the reference earlier and noted that most claimants had accepted the reference court’s decision. Consequently, the Special Leave Petition was dismissed.

This establishes a potential precedent that the facts and circumstances of each case are significant enough to justify the condoned delay in filing an appeal and to dismiss it as time-barred as well as for concluding litigation to the effect that if any right or remedy is not availed of for a long time, it ceases to exist. It is for the general welfare not to keep any litigation or dispute pending indefinitely. The determination of what qualifies as “sufficient cause” can vary based on the facts and circumstances of each case and is also subject to the discretion of the courts.

11. The learned Single Bench had found it fit to exercise its discretionary jurisdiction of condoning the delay subject to payment of cost of Rs.50,000/-. This Bench found no instance or occasion to interfere with the discretion so exercised by the learned Single Bench.

12. The instant appeal filed by the appellant is hereby dismissed and the impugned order dated 14.12.2023 passed by the learned Single Bench in connection with W.P.A No. 19320 of 2023 is hereby confirmed.

13. Accordingly connected application if any is hereby disposed of.

14. No order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)