

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-54546-2023 in/&

CRR-(F)-1844-2023 (O&M)

Date of decision: 29.02.2024

Deepak

....Petitioner

V/s

Noori and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Kaushik, Advocate for the petitioner.

SUMEET GOEL, J.

CRM-54546-2023

1. The present application has been filed on behalf of the applicant/petitioner-husband for condonation of 398 days delay in filing the accompanying revision petition. The main revision petition has been filed impugning the judgment dated 28.08.2022 passed by Learned Principal Judge, Family Court, Faridabad whereby the applicant-petitioner(herein) was directed to pay Rs.4,000/- per month to the wife and Rs.2,000/- per month to the son of the petitioner, from the date of filing of the petition before the Family Court.

2. Learned counsel for the applicant-petitioner, while seeking grant of prayer for condonation of delay of 398 days, has argued that the accompanying revision petition could not be filed in time as the petitioner (herein) was proceeded against *ex-parte* before the learned Family Court on 15.05.2022 & there was no timely intimation from his trial Court counsel in

this regard. It has been further argued that when the petitioner (herein) inquired from the said trial Court lawyer about the status of case, it is then that the applicant-petitioner came to know that he had been proceeded against *ex-parte* on 10.05.2022 in the matter before trial Court and even the final judgment dated 28.08.2022 had been passed against the applicant-petitioner. Learned counsel for the applicant-petitioner has further argued that the circumstances of the case indicate that the delay in filing the revision petition is neither intentional nor deliberate & hence delay deserves to be condoned.

3. I have heard learned counsel for the applicant-petitioner and have perused the paper-book.

4. The prime issue for determination in the instant case is as to whether, the application under Section 5 of the Limitation Act of 1963 filed by the applicant-petitioner seeking condonation of 398 days delay in filing the accompanying revision petition, deserves to be allowed. The analogous legal question that arises for consideration is as to what are the parameters for granting/allowing of an application seeking condonation of delay in terms of Section 5 of the Limitation Act, 1963.

Relevant Statutory Provisions

5. Section 5 of The Limitation Act, 1908 (hereinafter to be referred as '1908 Act') reads as under:-

***“5. Extension of period in certain cases.** Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfied*

the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.”

Section 5 of The Limitation Act, 1963 (hereinafter to be referred as ‘1963 Act’) reads as under:-

“5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfied the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

Relevant Case Law

6. The precedents, *apropos* to the matter(s) in issue, are as follows:

I. Re: ***Interest Reipublicae Ut Sit Finis Litimum***

(i) The Hon’ble Supreme Court in a judgment in *Civil Appeals No.4575-76 of 1998* titled as N. ***Balakrishan vs. M. Krishnamurthy***, decided on 03.09.1998 has held as under:-

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to seek 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. The law of limitation fixed a life-span 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 life-span 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 ut 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.”

II. Re: ***Vigilantibus Non Dormientibus Jura Subveniunt***

(i) The Hon’ble Supreme Court in a judgment in *Civil Appeal No.4994 of 2000* titled as ***State of M.P. vs. Pradeep Kumar***, decided on 12.09.2000, has held as under:-

“12. It is true that the pristine maxim “Vigilantibus Non Dormientibus Jura Subveniunt” (Law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistake. As the aphorism “to err is human” is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to seek whether it is possible to entertain his grievance if it is genuine.”

III Re: ***Reliance On Legal Maxims In Realm of Indian Jurisprudence***

A Five Judges bench of Hon'ble Supreme Court in a judgment in Criminal Appeal No.829 of 2005 tiled as ***Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director-Dr. K.M. Cherian and others***, decided on 26.11.2013 has held as under:-

“14.....We are, however, unable to accept the submission that reliance placed on legal maxims was improper. We are mindful of the fact

that legal maxims are not mandatory rules but their importance as guiding principles can hardly be underestimated. Herbert Broom in the preface to the First Edition of his classical work “Legal Maxims” (as seen in Broom’s Legal Maxims, Tenth Edition, 1939) stated:

“In the Legal Science, perhaps more frequently than in any other, reference must be made to the first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such maxims, many of which obtained in the Roman law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reason and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves.”

(IV) Re: ***Principles Underlying consideration for exercise of power for condonation of delay by a Court under Section 5 of The Limitation Act, 1963.***

(i) The Hon'ble Supreme Court in a judgment in Civil Appeal Nos.2970-2971 of 2012 tiled as ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai***, decided on 09.04.2012 has held as under:-

“12..... The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the

Court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation. The expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay."

(ii) The Hon'ble Supreme Court in a judgment titled as ***Sheo Raj Singh (Deceased) Through Lrs. & Ors. vs. Union of Indian & Anr., 2023 AIR (Supreme Court) 5109***, has held as under:-

"29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is

interested have been thrown off their guard by want of prosecution. The law of limitation, by fixing a time limit to litigation, enables a person to reckon upon security from harassment at a long distance of time at the sweet will of a rival party. The introduction to The Limitation Act, 1963 states that maxim *‘Interest republicae ut sit finis litium’* is the foundational source of the Law of Limitation. The Hon’ble Supreme Court in case of **N. Balakrishnan (supra)** has, by applying this maxim, held that the foundation of the Rules of limitation is that every legal remedy must be kept alive for a legislatively fixed period of time. The Hon’ble Supreme Court in the case of **Sarah Mathew (supra)** has conclusively upheld the principal that reliance can be placed on legal maxims in the realm of Indian jurisprudence. The doctrine of limitation is essentially founded on the paramount consideration(s) of public policy and expediency. The introductory chapter in the 89th report by Law Commission of India on the 1963 Act states:

“1.5 The policies underlying the law of limitation are ultimately based on justice and convenience. An individual should not live under the threat of a possible action for an indeterminate period, since it would be unjust. Again the defendant should be saved the task of defending stale causes of action, as it is often inconvenient. Further, vigilance in the pursuit of rightful claims should be encouraged so that these are the ethical or rational justifications for the law of limitation. All that has been said on the subject can be summarized by stating that the law of limitation rests upon three main foundations- justice, convenience and the need to encourage diligence.”

7.1 The issue of extension of prescribed period in certain cases, more commonly referred to as the issue of condonation of delay in filing an appeal/revision etc., has not undergone substantial change even though the 1963 Act brought in significant changes to the earlier Statute i.e. the 1908

Act. This aspect is clearly decipherable from juxtapositional perusal of Section 5 of 1908 and 1963 Act. During the course of debate in Parliament re: enactment of 1963 Act, reference was made to the celebrated book titled “Conflict of Laws” by Professor Joseph Story; relevant whereof reads as under:-

“Laws, thus limiting suits, are founded in the noblest policy; they are statutes of repose, to quiet titles, to suppress frauds, and to supply the deficiency of proof from the ambiguity and obscurity of transactions. They presume, that claims are extinguished, because they are not litigated within the prescribed period. They take away all solid grounds of complaint, because they rest on the negligence or laches of the party himself. They quicken diligence, by making it in some measure equivalent to right. They discourage litigation, by burying on one common receptacle all the accumulations of past times, which are unexplained, and have now become inexplicable. It has been said by Voet with singular felicity, that controversies are limited, lest they should be immortal, while men are mortal.....”

7.2 The Court, while dealing with an application for condonation of delay in filing appeal/revision etc., is required to undertake an onerous task of balancing, in an egalitarian manner, the rival rights of the parties to a *lis* i.e. on one hand is the applicant (seeking condonation of delay) urging to show cause for adjudication of the *lis* on merits by having such delay condoned *whereas* on the other hand is the non-applicant pleading that inter-se rights of the parties have already been crystallized and the litigation has attained finality. Thus, the Court is required to strike a poise and an even-handed equilibrium between the need to lend finality/definiteness to a

litigation *vis.-a-vis*. the peril of injustice arising out of rejection of a cause only on account of technicality of time limit prescribed under the limitation statute. The aspect of consideration of condonation of delay cannot be reduced to a mere ritual.

7.3 It is in the above-said backdrop that a Court is required to use the touchstone of “*sufficient cause*”, as provided under Section 5 of the 1963 Act, to adjudicate the issue of condonation of delay. The words “*sufficient cause*” have not been defined in the Statute in question. These words deserve to receive a meaningfully liberal construction so as to advance the cause of substantial justice. The Hon’ble Supreme Court in the case of **Maniben Devraj Shah (supra)** has held that these words are elastic enough to enable a Court to apply them in a meaningful manner which serves the ends of justice. A Court undoubtedly ought to give a wide interpretation to these words but such interpretation should, axiomatically, be in accordance with settled principles of justice, equity and fair play. The reason(s) put forward by an applicant (seeking condonation of delay) should qualify being explanation and not an excuse as held by the Hon’ble Supreme Court in the case of **Sheo Raj Singh (supra)**. Whether the applicant has been vigilantly pursuing his case, is essentially an important factor to be considered. The maxim ‘*Vigilantibus Non Dormientibus Jura Subveniunt*’ has also been held by the Supreme Court in the case of **Pardeep Kumar (supra)** to be a pertinent facet while dealing with the law of limitation. The statute works as an incentive to action and as a punishment for remissness. The applicant (seeking condonation of delay) is hence pertinently required to show cogent, convincing and persuasive reason(s) for condonation of such delay.

7.4 While liberal approach is required to be undertaken by a Court, when dealing with a plea for condonation of delay, yet the same cannot be allowed to entirely defeat the cause of non-applicant. Such liberal interpretation ought not be one which makes the statute itself pale into oblivion. Due weightage is needed to be accorded to the effects of crystallization of rights *inter-se* parties due to the judgment/order in question having attained finality, nature of acts having been done by concerned parties after expiry of prescribed period of limitation as also effects of such acts, third party rights having been created etc. Such situations are unfathomable in nature to be exhaustively summarized.

7.5 Judicial notice can well be taken of an argument, often raised in support of a plea for condonation of delay, that “*delay may be condoned by imposing reasonable costs*”. It goes without saying that, imposition of suitable costs for condonation of delay may be resorted to by a Court in appropriate cases so as to balance rival rights of parties but the same cannot serve as *elixir* for a plea seeking condonation of delay sans cogent reasons coming forth therefor. Even in cases where delay is ordered to be condoned subject to payment of costs, the quantification of such costs ought to be commensurate to the factors involved in the matter in hand viz. length of delay, comparative economic status of parties, the nature and subject matter of litigation etc.

7.6 The length of delay ought not be a factor by itself for rejection of a plea for condonation of such delay. There is no gainsaying that it is the explanation for the delay caused that is of substantial importance/relevance rather than the length of such delay.

7.7 It is difficult and rather undesirable to even attempt to define precisely the meaning of the words “sufficient cause”. To do so would be to crystallize into a rigid definition, a judicial discretion/power, which even the legislature has, for best of all reasons, left undetermined and unfettered. Any attempt in this regard would be, to say the least, a utopian endeavour.

8. As a sequel to above-said discussion, the following principles of law emerge:

- (I) A liberal approach, undoubtedly, ought to be accorded to a plea for condonation of delay made under Section 5 of The Limitation Act, 1963 so as to further the cause of substantial justice. The concept of substantial justice essentially includes in itself the desirability of adjudication of a claim of the litigant on merits thereof rather than rejection of the same, at the threshold, on account of being barred by limitation. However, adoption of such liberal approach cannot be stretched to mean that a prayer (for condonation of delay) ought to be granted sans reasonable explanation therefor. An applicant (seeking condonation of delay) has to bring forward cogent, credible and lucid reason(s) to substantiate such a plea. In case such reason(s) is not scrutable, a Court would well be within its discretion to decline such plea (for condonation of delay). In other words, inexplicable delay ought not to be condoned.
- (II) A Court ought to grant an application seeking condonation of delay when no negligence, inaction or want of *bona fide* is imputable to such applicant and/or such delay has occurred on account of circumstances beyond reasonable control of such applicant.
- (III) It is not the length of delay (sought to be condoned) but explanation thereof which is relevant for consideration by a Court.
- (IV) Law of limitation does not require an applicant (seeking condonation of delay) to furnish an exhaustive explanation on ‘day

to-day basis' for such delay. A Court while dealing with a plea for condonation of delay need not undertake such a pedantic approach.

- (V) In appropriate cases, a Court may consider imposing costs while granting an application for condonation of delay. However, the quantification of costs so imposed, must reflect the same being commensurate to the *lis* in issue as also attending circumstances therein.
- (VI) The factum; of non-applicant(s) or even strangers having altered their position(s) relying upon the applicant not having filed an appeal/revision etc. within stipulated time and resultant effects thereof; will indubitably be a pertinent factor for consideration of a plea for condonation of delay.
- (VII) A plea for condonation of delay by the State as also its instrumentalities has to be accorded a more liberal approach since the machinery involved in their working is impersonal in nature & hidden factors working therein cannot be given a complete amiss.
- (VIII) The discretion of a Court, while considering a plea for condonation of delay, will be exercised in view of peculiar facts/circumstances of an individual case. It is neither prudent nor feasible to fix any exhaustive guidelines for exercising such judicial discretion. On the contrary, it would be perilous to lay down such general criteria for governing such discretion. Needless to emphasize that exercise of such judicial discretion/power ought to be within the four corners of well settled principles of justice, good conscience and fair play.

Analysis (re facts of the present case)

9. Condonation of delay of 398 days is sought for by pleading that the applicant was proceeded ex-parte before the concerned Family Court on 10.05.2022 and there was lack of timely intimation from the trial Court counsel; the delay caused is neither intentional nor deliberate; the applicant was proceeded against ex-parte on 10.05.2022 whereinafter Family Court

had proceeded with decision of the main case itself on merits thereof & the applicant gained knowledge of the matter in question having been decided against him when he enquired from his trial Court lawyer regarding the status of his case.

10. A perusal of the impugned order dated 20.08.2022 reflects that the applicant was appearing, through counsel, before the Family Court but when the case was at the stage of cross-examination of the witness of the petitioner (therein), none appeared on behalf of the applicant (herein) on 10.05.2022. The main case i.e. a petition under Section 125 of Cr.P.C., 1973 filed on behalf of the wife and son of the applicant (herein) was partly allowed on 20.08.2022 whereby the applicant (herein) was directed to pay Rs.4,000/- per month to the petitioner(therein)-wife and Rs. 2,000/- per month to the petitioner (therein)-son from the date of filing of the petition before the Family Court. No reasonable & plausible explanation has been furnished by the applicant (herein) for his being proceeded ex-parte on 10.05.2022 before the learned Family Court, his not contacting his trial counsel from 10.05.2022 till the decision of the case by the Family Court on 20.08.2022 & the date as to when he enquired from his trial Court lawyer regarding the status of his case. The present application, seeking condonation of delay of 398 days, is bereft of specific details/particulars which may show *bona fide* on part of the applicant in pursuing his case as a reasonable/prudent man would have done. On the contrary, the facts decipherable in this case, clearly reflect a deliberate attempt on part of the applicant-husband to somehow delay the proceedings and procrastinate the culmination of maintenance determination proceedings. No cause muchless

sufficient cause as required in terms of The Limitation Act, 1963 has been shown to condone the delay of 398 days in filing the accompanying revision petition. The delay is not only inordinate but inscrutable apart from being inexplicable. Hence the application seeking condonation of delay of 398 days in filing the instant revision petition merits rejection.

Decision

11. The application (CRM-54546-2023) seeking condonation of 398 days in filing the revision petition is dismissed. Since the application seeking condonation of delay has been dismissed on merits thereof, the main revision petition stands dismissed as well accordingly.

(SUMEET GOEL)
JUDGE

February 29, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes