HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Restoration Application No. 123/2021

Babulal Gurjar Son Of Late Shri Nathu, Aged About 59 Years, R/o Kherwadi, Tehsil Amer, District Jaipur (Raj.)

----Petitioner

Versus

1. Kaptan Singh Son Of Shri Bane Singh, R/o Kanwarpura, Tan Pitapuri, Tehsil Neem Ka Thana, District Sikar (Raj.) (Driver Of Tanker No. Rj-23-Gb-2269)
2. Munna Lal Sharma Son Of Chotmal Sharma, R/o Ward No. 7, Manja Mohalla Kanwat, District Sikar (Raj.) (Owner Of Tanker No. Rj-23-Gb-2269)
3. The Oriental Insurance Company Ltd. Through Manager, Office Anand Bhawan Sansar Chandra Road, Jaipur (Insurance Company Of Tanker No. Rj-23-Gb-2269)

----Respondents

For Petitioner(s)	:	Mr. Kartik Soti for Mr. Anshul Sharma
For Respondent(s)	:	

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

20/12/2024

1. Instant restoration application is preferred by applicant to restore S.B. Civil Misc. Appeal No. 114/2019 dismissed on 11.09.2019 in pursuant to order dated 08.03.2019.

2. Office has pointed out a delay of 775 days in filing restoration application and to substantiate the reasons of delay an application under Section 5 of Limitation Act is filed on the ground that the appellants were not aware about per-emptory order and required compliance of such order.

3. Heard learned counsel for the applicant on application under Section 5 of Limitation Act.

4. Section 5 of the Limitation Act prescribes that any appeal or revision or an application may be admitted after the prescribed period, if the appellant or the petitioner satisfies the Court on sufficient cause for not preferring an appeal or revision or making an application within prescribed period.

5. In case of **Collector, Land Acquisition, Anantnag Vs. Katiji AIR 1987 SC 1353,** Hon'ble Supreme Court laid down the following principles to allow application under Section 5 of the Limitation Act:-

> 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 days delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay. every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.
> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
> 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but

> because it is capable of removing injustice and is expected to do so.

6. In case of **Balwant Singh (dead) Vs. Jagdish Singh and Ors. 2010 (8) SCC 685**, Hon'ble Supreme Court while considering Section 5 of Limitation Act has referred the judgment in the case of **Union of India Vs. Ram Charan AIR 1964 SC 215** and observed that the explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of Hon'ble Supreme Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay.

7. In the case of **Brijesh Kumar & Ors. v. State of Haryana & Ors.: (2014) 13 SCC 291**, while referring the judgment of **Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors.:**

(2013) 12 SCC 649, Hon'ble Supreme Court has laid down that sufficient cause is a condition precedent for exercise of discretion by the Court for condonation of delay. The Supreme Court further observed that the Court cannot condone the delay, if it is not properly, satisfactorily and convincingly explained, and a delay cannot be condoned on sympathetic grounds.

8. Very recently condonation of delay under Section 5 of Limitation Act was considered by Hon'ble Supreme Court in case of **P. Subba Reddy (died) by LRs. And Ors. Vs. Special Deputy Collector (LA) 2024 INSC 286** wherein also it was held that unless sufficient cause is shown the application under Section 5 of Limitation Act cannot be allowed. The underlying provisions after harmonious construction of provision of law were formulated in following manner:-

> (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, tantamount to disregarding the statutory provision.

9. Considering the grounds as mentioned in the application it is clear that same is not supported by any document. Even the counsel for appellant was not present on date of per-emptory order before the Co-ordinate Bench of this Court. The reasons assigned in the application sans merits and unless sufficient ground is shown the application for condonation of delay cannot be allowed.

10. Consequently, the application under Section 5 of Limitation Act is hereby dismissed along with civil restoration application.

11. Misc. application(s), if any, stands disposed of.

12. No order as to costs.

(ASHOK KUMAR JAIN),J

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