

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

Justice Bibhas Ranjan De

CRMSPL 78 of 2023

With

IA NO: CRAN 1 of 2023

(Assigned)

MMTC LIMITED

Vs.

M/s. R. Priyarelall Iron & Steel Private Limited & Anr.

For the Petitioner/
appellant/applicant

:Mr. Sandipan Ganguly, Sr. Counsel, Adv.

Mr. Swarajit Dey , Adv.

Mr. Piyush Kumar Ray, Adv.

Mr. Vipul Vedant, Adv.

For the Respondents

:Mr. Phiroze Edulji, Sr. Counsel, Adv.

Mr. Koushik Kundu, Adv.

Last Heard on

: 13.01.2025

Judgment on

: 11.03.2025

Bibhas Ranjan De, J.

1. By way of a petition under Section 378 (4) of the Code of Criminal Procedure (for short Cr.P.C) the appellant is seeking special leave to appeal against the impugned order dated 19.01.2023 passed by Ld. Metropolitan Magistrate, 6th Court, Calcutta in connection with Complaint Case being CS/61079 of 2016 under Sections 138/141 of the Negotiable Instruments Act, 1881 (for short N.I Act) thereby dismissing the case and acquitting the respondents in terms of Section 256 of the Cr.P.C along with an application praying for condonation of delay of 292 days in filing the Special Leave Petition under Section 5 of the Limitation Act .

Backdrop:-

2. The impugned proceeding finds its genesis from a complaint filed under Section 138 of the N.I Act preferred by the appellant alleging *inter alia* that the complainant, M/s MMTC Ltd. (hereinafter referred to as "the company" and/or "the complainant company"), is a Government of India Enterprise having its Corporate Office at Core-1, "Scope Complex", 7. Institutional Area, Lodhi Road, New Delhi 110 003 and

regional office at 8, India Exchange Place, NIC Building, 4th Floor, Kolkata - 700 001 including various branches throughout the length and breadth in India. The accused no.1 is a company [herein after referred to as the "said company" and/or "accused company"] within the meaning of the Companies Act, 1956 having its office(s) at the above-mentioned address(es). The accused no. 2 is a Director of the accused company. The accused no. 2 is/was in charge of and/or responsible to the said accused company for its day to day business and he also enjoys/enjoyed the overall control over the regular affairs of the said company during all the material time and transacted with the complainant company representing the accused company.

- 3.** The appellant company had a long standing business relationship with the accused persons inclusive of supplying LAM Coke during which the accused company used to purchase LAM Coke on High Seas basis imported by the complainant company after entering into various agreements with the complainant company. As per the practice, the accused company previously kept with the appellant/company post dated cheques totaling to worth of

Rs. 58,05,50,000 (Rupees Fifty Eight Crores Five Lakh Fifty Thousand Only) drawn in favour of the appellant/company towards security liable to be placed for clearance by the company in the event of default of payment by the accused persons towards discharging their liabilities to the appellant/company. Subsequently, on the request of the accused persons the said total value of the said cheques was reduced to Rs. 25 Crores. During the said business transactions, the appellant/company used to supply materials to the accused company from time to time and in turn the accused persons used to issue from time to time cheques towards relinquishment of their liability against such supply of materials and accordingly the liability of the accused company stood fluctuated from time to time. After repeated persuasions by the accused persons, the appellant/company agreed to hold a joint meeting on 18th July, 2011 wherein they agreed to reduce the liability of the accused company to Rs. 11.50 Crores provided the accused persons would strictly abide by the undertakings given by them regarding relinquishment of their said liability within the stipulated period of time. Almost immediately thereafter,

to generate confidence, trust and faith in the appellant/company about them, the cheques already issued by the accused persons which were lying with the appellant/company towards security as stated above for a total amount of Rs. 25 Crores were replaced by fresh post dated cheques for the same amount. But, soon after it was unveiled by the subsequent conduct of the accused persons that they had no such intention at all to make the payments as per the said terms but on the contrary their whole inherent intention was to induce the appellant/company to reduce the quantum of liability of them by representing fake assurances regarding payment of money. The accused persons did not make any such payment which was undertaken by them as stated above or at all. On the contrary, the accused persons evaded to make any such payment. It is further alleged that on various lame pretexts, the accused persons were deliberately and dishonestly evading making of any such payment and as a result in the mean time the aforesaid Six Cheques, all dated 22.07.2011 which were lying with the complainant company

automatically reached the verge of expiry but the accused persons did not replace those any more.

4. In the said premises, after giving sufficient opportunity to the accused persons for making payments lastly vide letter dated 14 January, 2012 asking them to at least replace the said cheques, in vain, the appellant/company having no other alternative placed, out of the aforesaid fresh Six Cheques, the Four account payee cheques respectively bearing no. 002339 for Rs. 10,00,00,000/- (Rupees Ten Crores Only), no. 002340 for Rs. 5,00,00,000/- (Rupees Five Crores Only), no. 002342 for Rs. 2,00,00,000/- (Rupees Two Crores only), and no. 002344 for Rs. 1,00,00,000/- (Rupees One Crore only) all dated 22.07.2011 drawn on the HDFC Bank, 2/6, Sarat Bose Road, Central Plaza, Kolkata - 700 020 backed by the abovementioned existing legal debt and/or liability of Rs. 17,90,43,619.04 of the accused persons for clearance through its banker, namely HDFC Bank, Stephen House Branch, Kolkata on 16.01.2012 which were returned dishonoured by the banker with the common specific remark 'payment stopped by drawer' vide cheque return memo dated 16.01.2012. The accused persons herein immediately

thereafter on the very next day. i.e. on 17th January, 2012 moved a petition before this Hon'ble Court wherein the Court, inter alia, was pleased to order maintaining of status quo thereby directing the defendant/respondent No. 2 and 3 therein in respect of payment of money secured by Bank Guarantee till 25.01.2012. The said information reached the appellant/company through letter dated 18.01.2012.

- 5.** In the said facts and circumstances of total dishonouring the aforesaid undertaking of payment by the accused persons, vide letter dated 08.02.2012, the appellant/company called upon the accused persons to make payment of the entire defaulted amount or to construe the mutual settlement as stand cancelled with a liberty to claim the entire amount of outstanding dues along with interest 11% on monthly rent basis from the date the appellant/company is out of pocket till realisation. Again no payment was made by the accused persons. Thus as on 16 January, 2012 the total amount due from the accused company was Rs. 17,90,43,619.04 (Rupees Seventeen Crores Ninety Lakhs Forty Three Thousand Six Hundred Nineteen and Four Paise Only) .

- 6.** In the above premises the appellant/company issued a demand notice dated 11.02.2012 through its Advocate under Section 138(b) of the Negotiable Instruments Act calling upon the accused persons to pay Rs. 18,00,00,000/- (Rupees Eighteen Crores Only) being the total sum covered by the said four dishonoured cheques to the complainant company within 15 days of receipt of the said notice to evade prosecution, inter alia, under Section 138/141 of the Negotiable Instruments Act, 1881 as it had no other alternative but to demand the "cheque amount" . The said notice was sent to the accused company as well as accused no 2 at their respective correct addresses under Registered Post with A/D from the Kolkata G.P.O. on 11.02.2012 vide respective postal receipt(s) issued by the postal authority.
- 7.** The appellant states that the demand notice was duly served upon the accused company and accused no. 2 on 14.02.2012 as reflected from the relevant A/D Cards returned after service. It is further stated that even after due receipt of the demand notice, the accused company No.1 neither complied with the said notice nor did they pay the cheque amount nor even the liability amount being Rs. 17,90,43,619.04 or any

amount at all to the complainant company even till date and thereby has invited the penal mischief of Section 138 of the Negotiable Instruments Act.

Argument:-

8. Ld. Sr. Counsel, Mr. Sandipan Ganguly, appearing on behalf of the petitioner has submitted that the appellant/petitioner, being a government enterprise, is governed by a myriad of procedural formalities intrinsic to its functioning. Due to certain procedural lacunae and administrative delays, the approval, as sought for by the authorized representative on 21.11.2022, was regrettably granted only on 05.07.2023 pertaining to the appointment of new advocate/solicitor. In the interregnum, the authorized representative of the appellant/petitioner was completely unaware of the stage and/or day-to-day proceedings in the complaint case before the Learned Trial Court, including the passing of the impugned order dated 19.01.2023.
9. Mr. Ganguly has further submitted that the delay has been inadvertently caused due to the imposition of a nationwide lockdown during the Covid-19 Pandemic which resulted in complete closure of the regional office of the appellant.

Afterwards the company through its standard operating procedure appointed one advocate who subsequently refused to represent the appellant company. The appellant/petitioner, in the meantime, was completely unaware of the stage/state of the proceedings in connection with the complaint case pending before the Learned Trial Court.

- 10.** Before parting with, Ld. Sr. Counsel has contended that the appellant were not apprised of the show cause issued against it as the conducting advocate did not take any steps on behalf of the petitioner before the Learned Trial Court. Mr. Ganguly has also stated that the notice directing the petitioner to show cause as issued by the Learned Trial Court vide its order dated 21.11.2022 was not served upon the petitioner due to the change of address of the regional office of the petitioner. As a result of which the Trial Court dismissed the complaint case for non prosecution and acquitted the accused through the impugned order. Therefore, he has tried to make this Court understand that the petitioner is a bona fide litigant and has always taken proper and diligent steps to assert its rights subject to knowledge of relevant facts and petitioner is not guilty of any

laches, negligence or willful default or delay in prosecuting the instant litigation.

11. In support of his contention, Mr. Ganguly has relied on the case of

- ***Central Bureau of Investigation vs. Binod Kumar Maheswari and others reported in 2024 SCC OnLine Cal 1339***

12. Per contra, Ld. Sr. Counsel, Mr. Phiroze Edulji, appearing on behalf of the respondents has argued that the petitioner has not even deemed it fit and proper to explain the time period between 14-01-2020 to the time when the nation-wide lockdown was announced in March 2020. The petitioner/company have themselves admitted that the main office was closed only for a period starting from 31-08-2020 to November' 2020. So, as per the averments made in the petition, it is an admitted position that the office of the petitioner was closed for three months only and the operations were functional from November' 2020 onwards. The petitioner has intentionally failed to explain in the present application as to the reasons that prevented them from following up with the matter since November' 2020.

13. Mr. Edulji has also submitted that it is of paramount importance to note that the petitioner has made evasive averments with regard to appointment of individuals and their superannuation which is completely their internal matter and has no bearing with regard to the adjudication of the present application for condonation of delay. The petitioner has intentionally and deliberately inserted the said facts to substantiate the delay.

14. In this regard, Ld. Sr. Counsel has suggested that the internal arrangement of the petitioner company cannot be a ground for courts of law to wait for indefinite period of time. While going through the paragraphs of the application, it clearly does not demonstrate any cogent and substantial reason to condone the delay as has been caused while denying averments made therein. It is stated that only during the lockdowns as announced by the Government of India, the courts were closed for filing but the petitioner had enough opportunity to file the application through online module as allowed by the Hon'ble Court during this said period. The application should have been filed through available modes and the delay so caused by not availing such mode shows the

reluctance of the petitioner in not filing the application and taking proper steps within the time of limitation.

15. Mr. Edulji has also highlighted the trite law that a company cannot claim any leverage because it is government organization. It is a settled position of law, that the government offices or government aided companies cannot take the plea of procedural delay and claim relaxation. He has further emphasized on the fact that the applicant has to supply elaborate ground for the delay caused by explaining the same on a day to day basis. Only because the application has been filed by the petitioner company being a Government company does not entitle the application to be admitted automatically.

16. In his concluding argument, Ld. Counsel has tried to make this Court understand that it is an admitted position, that the office of the petitioner was functioning on and from November' 2020 and there is no reason explained as to why the petitioner in spite of having the knowledge that their Learned Advocate does not intend to represent them, had not appointed another Advocate and / or has caused search to

find out the fate of the proceeding which was initiated at their behest.

17. In support of his contention, Mr. Edulji has taken assistance of the following cases:-

- ***Union of India vs. Rishabh Constructions Pvt Ltd. taken from ARB.A. (COMM.) 44/2024***
- ***Pathapati Subba Reddy vs Special Deputy Collector reported in 2024 SCC OnLine SC 513***
- ***Government of Maharashtra vs. Borse Brothers Engineers and Contractors Private Limited reported in (2021) 6 Supreme Court Cases 460***

Ratio of the cases relied on behalf of the parties:-

18. Mr. Edulji through the referred cases of ***Rishabh Constructions*** (supra) ***Pathapati Subba Reddy*** (supra) & ***Borse Brothers Engineers and Contractors Private Limited*** (supra) has tried to substantiate his plea that Government is not entitled to any special consideration for condonation just because delay is caused due to administrative lethargy of the Government machinery.

19. In this regard, he has referred to the specific observation of the Hon'ble Apex Court recorded in the case of ***Pathapati Subba Reddy*** (supra) which stands as follows:-

“ 26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(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.”

20. Mr. Ganguly on the other hand has referred to the observations made by this very Court in the case of ***Binod Kumar Maheswari*** (supra).

Analysis:-

21. At the very outset, it would be pertinent to mention that there has been a delay of around 292 days in preferring the instant appeal. I have duly considered the rival contentions advanced on behalf of the parties especially the reasons assigned by the petitioner for delay.

22. Considering the argument advanced on behalf of the appellant it appears to me that the prayer for condonation of delay is mainly on three counts. First one is The appellant/petitioner was not served with the show cause as issued by the Learned Trial Court vide its order dated 21.11.2022. Next is the then conducting advocate for the appellant/petitioner did not inform the members /employees/representative of the appellant/petitioner that he has not been taking any steps on behalf of the

appellant/petitioner before the Learned Trial Court. Lastly, the appellant/petitioner was unaware about the negligent conduct of the then conducting advocate due to which the case was dismissed for non-prosecution.

23. In my humble opinion, any party to an application even if it is a government organization should strictly adhere to the rules of limitation and therefore no relaxation should automatically be granted to a party for being a government organization due to procedural delay. Having regard to the aforesaid principle, the power of the Court to condone a delay varies from case to case and strictly on the basis of **sufficiency of cause.**

24. Now coming to the factual matrix of the case at hand, the appellant/petitioner has given plausible and acceptable explanation regarding the delay in filing the special leave petition. Moreover, the dismissal of the case by the Learned Trial Judge was not on merit but only due to non-prosecution. Therefore, it cannot be said that the fate of the plea raised by the petitioner is decided beyond reasonable doubt.

- 25.** It would also be pertinent to mention that the petitioner being a government enterprise has certain procedural formalities and do not share the same characteristic traits of a private individual. In this regard, the Hon'ble Apex Court time again reiterated the settled proposition of law that if the explanation does not smack of malafides or is not put forth as a part of a dilatory tactics then the Court must show utmost consideration to the suitor.
- 26.** At this juncture, I would like to discuss a celebrated judgment regarding the impersonal nature of functioning of a government organization held in the case of ***Sheo Raj Singh (deceased) through LRS. Union of India, 2023 SCC OnLine SC 1278.***
- 27.** The highlights of the above referred case as enumerated by the Hon'ble Apex Court are to the effect that:-

“30. 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.

31. 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 real.

32. An “excuse” is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an “excuse” would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that “a court of appeal should not ordinarily interfere with the discretion exercised by the courts below”. If any authority is required, we can profitably refer to the decision in *Manjunath Anandappa v. Tammanasa* [Manjunath Anandappa v. Tammanasa, (2003) 10 SCC 390], which in turn relied on the decision in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* [Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593 : 1980 SCC (L&S) 197] where it has been held that:

“an appellate power interferes not when the order appealed is not right but only when it is clearly wrong”.

(emphasis in original)

34. *The order under challenge in this appeal is dated 21-12-2011 [Union of India v. Sheo Raj, 2011 SCC OnLine Del 5511] . It was rendered at a point of time when the decisions in Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107] , Ramegowda [G. Ramegowda v. LAO, (1988) 2 SCC 142] , Chandra Mani [State of Haryana v. Chandra Mani, (1996) 3 SCC 132] , K.V. Ayisumma [Tehsildar (LA) v. K.V. Ayisumma, (1996) 10 SCC 634] and Lipok AO [State of Nagaland v. Lipok Ao, (2005) 3 SCC 752 : 2005 SCC (Cri) 906] were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] is one such decision apart from University of Delhi [University of Delhi v. Union of India, (2020) 13 SCC 745]] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above.*

35. *We find that the High Court in the present case assigned the following reasons in support of its order:*

35.1. *The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.*

35.2. *The expression “sufficient cause” is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.*

35.3. *It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.*

35.4. *Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the*

delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

35.5. *The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.*

36. *Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not.*

37. *It is now time to distinguish the two decisions on which Mr Sharma heavily relied on.*

38. *Balwant Singh [Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685 : (2010) 3 SCC (Civ) 537] arose out of a landlord-tenant dispute. Our thought process need not be guided by the law laid down on what would constitute “sufficient cause” in a dispute between private parties to a case where the Central Government is a party.*

39. *According to Mr Sharma, University of Delhi [University of Delhi v. Union of India, (2020) 13 SCC 745] is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi [University of Delhi v. Union of India, (2020) 13 SCC 745] , was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of non-availability of the Vice Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.*

40. *We can also profitably refer to Koting Lamkang [State of Manipur v. Koting Lamkang, (2019) 10 SCC 408 : (2020) 1 SCC (Civ) 163] , cited by Mr Sen, where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi [University of Delhi v. Union of India, (2020) 13 SCC 745] was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows : (Koting Lamkang case [State of Manipur v. Koting Lamkang, (2019) 10 SCC 408 : (2020) 1 SCC (Civ) 163] , SCC p. 410, paras 7-8)*

“7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.”

(emphasis supplied)

41. *Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision [Union of India v. Sheo Raj, 2011 SCC OnLine Del 5511] to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.*

Conclusion:

42. *For the foregoing reasons and the special circumstances obtaining here that the impugned order [Union of India v. Sheo Raj, 2011 SCC OnLine Del 5511] reasonably condones the delay caused in presenting the appeal by the first respondent before the High Court, the present appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed of.”*

28. In view of the aforesaid observation of the Hon'ble Apex Court, I cannot abstain from providing a **leeway** to the

petitioner with regard to delay in filing special leave petition as sufficiency of cause has to be judged in pragmatic manner so as to advance the cause of justice. In the given facts and circumstances and after due consideration of all the available materials on record, I deem it appropriate to condone the delay of 292 days as it cannot be ignored that if appeals brought by the Government are lost for such defaults, in my opinion, it is the public interest which gets severely affected.

29. Accordingly, CRAN 1 of 2023 is allowed.

30. However, I would like to remind the concerned Government Department that they are under a special obligation to perform their duties with due diligence and commitment. Condonation of delay should not be used as an anticipated benefit for the Government Departments who are party to a case, as the law shelters everyone under the same light. It should not be swirled for the benefit of a few.

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31. Pursuant to the decision of the CRAN application the instant special leave petition is granted accordingly.

32. The appellant is granted leave to prefer the Memorandum of appeal within the statutory period.

- 33.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 34.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]