IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No.1136 of 2025.

IN/AND

L.P.A. No.75 of 2021

1. The State of Jharkhand
2. The Director, Secondary Education, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi.

... Respondents/Appellants

Versus

Brahmdeo Choudhary, son of Mahadeo Chaudhary, at present Residing At Qtr. No. TF-115, Tenughat, P.O. & P.S. Tenughat, District Bokaro.

... Petitioner/Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants: Mrs. Darshna Poddar Mishra, A.A.G.-1
For the Respondent: Mr. A.K. Sahani, Advocate
Mr. Ajit Kumar, Advocate

Reserved on: 27.02.2025 **Pronounced on: 11/03/2025**

***Per* M.S. Ramachandra Rao, C.J.**

I.A. No.1136 of 2025.

1. This application is filed under Section 5 of the Limitation Act, 1963 to condone the delay in filing the Letters Patent Appeal challenging the judgment dt. 16.10.2019 of the learned Single Judge in W.P. (S) No. 7556 of 2017.

2. The appeal was filed on 19.02.2021 by the applicants.

3. Initially, the applicants filed an Interlocutory Application being I.A. No.1121 of 2021 for condonation of period of limitation in filing appeal, but later on, they filed I.A. No.1135 of 2025 for withdrawal of I.A. No.1121 of 2021 which was allowed on 06.02.2025, with a liberty to pursue I.A. No.1136 of 2025 filed by them for the same relief.

4. It may be pointed out that the judgment impugned was pronounced on 16.10.2019 in the presence of both parties, but the appeal, as pointed out earlier, was filed on 19.02.2021. There is a delay of 461 days in filing the same according to the note put up by the Registry.

5. Counsel for the applicants sought to contend that free copy of the judgment was sent to the Department on 08.01.2020; then it was examined by the Department at different levels and reviewed on 16.01.2020 and put up before the Deputy Director, Secondary Education on 24.01.2020 proposing to file Letters Patent Appeal against the impugned judgment. It is stated that then the file was decided to be sent to the Departmental Retainer for preparing the Statement of Facts for filing Letters Patent Appeal through a note-sheet dt. 25.01.2020.

6. Thereafter, according to the applicants, Covid-19 pandemic came and because of that, Statement of Facts was prepared only on 19.05.2020, and then the Departmental Retainer was called for discussion on the Statement of Facts and the same was approved on 19.06.2020. It is stated that the file was moved for appointment of Law Officer on 24.06.2020 and thereafter, the appointment of the Law Officer happened and the Letters Patent Appeal was filed on 24.02.2021.

7. Reliance is placed by Counsel for applicants on the judgment dt. 23.3.2020 of the Supreme Court in *Suo Motu* Writ Petition (C) No.3 of 2020 excluding the period of limitation in all proceedings before the Courts/Tribunals from 15.03.2020 till further orders.

8. It is contended by the counsel for the applicants that the said order came to an end on 08.03.2021 permitting relaxation of the period of limitation between 15.03.2021 and 14.03.2020. Therefore, it is contended

that the period of limitation applicable to the instant case would be from 17.11.2019 to 14.03.202, i.e., 119 days and there are good grounds to condone the said period of delay.

9. It is stated that there was no willful omission on the part of the applicants and so the said period of delay was liable to be condoned as it was only caused by procedural formalities.

10. We do not agree with the submission of the counsel for the applicants that delay in filing the LPA has been satisfactorily explained by the applicants.

11. Admittedly, the judgment of the learned Single Judge was pronounced on 16.10.2019 in presence of both the parties. The period of delay in filing the Letters Patent Appeal is admittedly 30 days from the date of receipt of certified copy.

12. It is not in dispute that the applicants applied for certified copy of the judgment of the learned Single Judge only on 15.10.2020 i.e after almost one year from date of pronouncement of judgment by the learned Single Judge and got it on 22.10.2020.

What prevented the applicants from applying the certified copy of the impugned judgment of the learned Single Judge immediately after it was pronounced on 16.10.2019 is not explained by the applicants.

13. The Covid-19 pandemic commenced in March 2020 and the lockdown was imposed by the Central Government only on 24.03.2020. On 23.03.2020, the Supreme Court passed the above order extending the limitation with effect from 15.03.2020 which was continued upto 08.03.2021. Later other orders were also passed on 8.3.2021 and 27.9.2021.

14. Nothing prevented the Appellants from filing the LPA within 30 days from 16.10.2019 or before 15.3.2020. But during this period nothing substantial was done by the applicants in that regard. After 24.1.2020, when decision was allegedly taken to file the LPA and 15.3.2020 no event is indicated and the action allegedly commenced only on 19.5.2020.

15. The time for filing the LPA which commenced on 16.10.2019 had already started running from that date and continued till 15.3.2020.

16. The Supreme Court in ***Sagufa Ahmed and Others*** *V.* ***Upper Assam Plywood Products Private Limited and Others***[1]**,** clarified that what was extended by the Supreme Court's order in ***Cognizance for Extension of Limitation, In Re***[2]***,*** was only the period of limitation and not the period upto which delay can be condoned in exercise of discretion conferred by statute.

It clarified that the said order was intended to benefit the vigilant litigant who was prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. The law will assist only those who are vigilant about their rights and not those who sleep over them.

The Supreme Court held that Section 3(1) of the Limitation Act makes every proceeding filed after the said period of limitation liable to be dismissed subject to the provisions contained in Section 4 to 24 and Section 5 enables admission of any appeal or application after the prescribed period.

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[1] (2021) 2 SCC 317
[2] (2020) 19 SCC 10

It clarified that any period beyond the prescribed period during which the court or tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be within the prescribed period.

It rejected the plea of the applicant in that case that against an order passed by NCLT on 25.10.2019, they were entitled to file appeal before the NCLAT even on 20th July, 2020, though the statute i.e., Section 421 of the Companies Act, 2013 mandates filing of appeal within 45 days from the date on which copy of the order of NCLT is made available, which is extendable by the proviso for a further period of 45 days.

The Supreme Court held that the applicant had waited from 25.10.2019, the date on which the NCLT passed the order, upto 21.11.2019 to make a copy application and after the NCLT gave copy of the order on 19.12.2019 and it was received by their counsel, *the period of limitation commences and cannot be stopped from running*.

The period of 45 days to file the appeal from 19.12.2019 expired on 02.02.2020 and the further 45 days, in which the delay was liable to be condoned, also expired on 18.03.2020.

It held that since the appellants did not file the appeal on or before 18.03.2020 but filed it on 20th July 2020, their appeal was time-barred.

17. In ***Prakash Corporates v. Dee Vee Projects Ltd***[3] the Supreme court clarified that the decision in ***Shagufa Ahmed*** (1 Supra) was rendered prior to the orders dt.8.3.2021 and 27.9.2021 in Suomotu W.P.No.3 of 2020 by another 3 Judge bench; and that in those later orders the Supreme court provided for the extension of period of limitation and also *held that in*

[3] Civil Appeal No. 1318 of 2022 dt.14.2.2022

computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.3.2020 to 2.10.2021 shall stand excluded.

18. But even then if the limitation for the filing of the Letters Patent Appeal has started to run from 16.10.2019, the period till 15.3.2020 cannot be excluded. In that way there is a delay of 120 days in filing the LPA.

19. In ***V. Nagarajan*** *V.* ***SKS Ispat and Power Limited and Others***[4] also**,** **t**he Supreme Court clarified that the order dt.23.3.2020 passed by it under had only extended period of limitation applicable in the proceedings *only in cases where such period has not ended before 15.03.2020.* If there is no impossibility in filing an appeal before the said date, the bar of limitation would apply.

20. In ***Aditya Khaitan v. IL and FS Financial Services Limited*** [5], the summons in a Commercial Suit was served on 7.2.2020 and the thirty days under Or.8 Rule 1 CPC to file the written statement expired on 8.3.2020 and the outer limit of 120 days mentioned in proviso thereto as amended by Section 16 of the Commercial Courts Act, 2015 expired on 6.6.2020 i.e during the period the Supreme Court order dt.23.3.2020 was in force. The application for taking on record the written statements and extension of time was filed on 20.1.2021. Therefore the Supreme Court held , applying the later orders passed by it on 8.3.2021 and thereafter extending limitation, that the applications filed by it are well within time.

In the instant case the limitation for filing the LPA expired long before 15.3.2020, and so the applicants cannot get the benefit of extended period of limitation since they filed the LPA on 19.2.2021.

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[4] (2022) 2 SCC 244
[5] Civil Appeal Nos.6411-6418 of 2023 dt. 3.10..2023

21. In the instant case, once the time starts running on 15.11.2019, it does not stop and total period of delay has to be taken as 120 days. During this period the applicants have not shown sufficient diligence to take steps to file the LPA. As stated supra, they applied for a certified copy of the judgment of the learned Single judge on 15.10.2020 and got it on 22.10.2020. Why they could not apply for even certified copy of the judgment before 15.3.2020 is not explained by the applicants. Also from 24.1.2020 till 19.5.2020 they did nothing.

22. In this view of the matter, we are not inclined to condone the said period of delay.

23. Accordingly, this application fails and is dismissed. Consequently, the appeal is also dismissed.

24. Pending Interlocutory Applications, if any, stand disposed of.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Manoj/-