ORISSA HIGH COURT : CUTTACK

I.A. No.1951 of 2025
(an Application for condonation of delay)
in
W.A. No.732 of 2025

In the matter of an Application to condone the delay
in filing Appeal under Article 4 of
the Orissa High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Orissa, 1948

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Damayanti Patra
Aged about 42 years
Daughter of Mahendranath Patra
At: Heseldihi, P.O.: Lupung, P.S.: Tiring
District: Mayurbhanj. ... Appellant
(Petitioner in
the Writ Petition).

-*VERSUS*-

1. State of Odisha
Represented though
Commissioner-*cum*-Secretary to Government
School & Mass Education Department
Secretariat Building
Bhubaneswar, District: Khordha.

2. Collector-*cum*-C.E.O.
Zilla Parisad, Mayurbhanj
At/P.O./P.S.: Baripada
District: Mayurbhanj.

3. District Project Co-ordinator
Sarva Shiksha Abhijan, Mayurbhanj
At/PO/P.S.: Baripada
District: Mayurbhanj.

4. District Education Officer, Mayurbhanj
At/P.O./P.S.: Baripada
District: Mayurbhanj.

5. Block Education Officer, Tiring
At/P.O.: Tiring
District: Mayurbhanj.

6. State Project Director
Odisha Primary Education Programme Authority
Shiksha Soudha, Unit-V
Bhubaneswar, District: Khordha.

7. Headmaster
Raibadi Primary School
At/P.O.: Raibadi, P.S.: Tiringi
District: Mayurbhanj. ... Respondents
(Opposite Parties in the Writ Petition).

Counsel appeared for the parties:

For the Appellant : Mr. Samir Kumar Mishra,
Senior Advocate
assisted by
M/s. Jagajiban Pradhan,
P.S. Mohanty, S. Sahoo,

S. Palatasingh and S.R. Behera,
Advocates

For the Respondents : Mr. Saswat Das,
Additional Government Advocate

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 15.07.2025 :: Date of Order : 15.07.2025

ORDER

HARISH TANDON, CJ.—

I.A. No.1951 of 2025 in WA No.732 of 2025

1. The instant Interlocutory Application has been filed for condonation of delay of 421 days in preferring the instant appeal against the common judgment dated 22nd December, 2023 passed in WP(C) No.7525 of 2018.

2. After the service of copy of the condonation application upon the respondents, they were directed to file their objection, which in fact has been filed dealing with all the statements made in the said application for condonation of delay.

3. The application for condonation of delay contained the averments in five paragraphs. The first paragraph relates to prelude of the case made out in the writ petition and its disposal by the Single Bench. The second paragraph is relatable to cause which prevented the appellant from preferring the instant appeal within the period of limitation, whereas the other paragraphs are formal in nature and do not have any bearing on the explanation in relation to delay.

4. It would be apposite and profitable to quote paragraph-2 of the said application as the appellant intended to take benefits thereof for condonation of delay. The said paragraph-2 is quoted as under:

> *"2. That it is humbly submitted that the appellant has been suffering from uterus fibroid, i.e., which is a medical condition giving intense physical discomfort causing significant disruption to daily life and the appellant has been under treatment since the month of March, 2022. In fact, the ailment of the appellant got aggravated in the month of December, 2023 and the appellant has been suffering from acute pain and physical discomfort since then and unable to carry out day to day activities. The suffering of the petitioner reduced considerably in the 2nd week of March, 2025 and thereafter, she came to file the appeal. Even she has undergone checkup recently on 19.02.2025. Thus, there is delay of 421 days in filing the appeal."*

5. It is manifest from the meaningful reading of the averments made in paragraph-2, as quoted above, that the shelter is taken on the medical issues suffered by the appellant which creates an obstacle in taking prompt decision in filing the instant appeal before this Court. The documents annexed in support of the aforesaid pleadings relate to two medical prescriptions; one issued in the month of March/April, 2022 and the other on 19th February, 2025. Admittedly, the impugned common judgment was delivered on 22nd December, 2023 and there is no corroborative evidence produced before this Court which may have thrown light on the incapacitation of the appellant in preferring the appeal within the statutory period of limitation provided therefor.

6. The argument is sought to be advanced before us that the Court while considering an application for condonation of delay should not be swayed by the length of delay as the merit of the matter should also be looked into. In support of the aforesaid contention, reliance is placed upon a judgment of the Apex Court in *Inder Singh Vrs. The State of Madhya Pradesh), 2025 SCC OnLine SC 600 2025 = LiveLaw (SC) 539*. The said Special Leave Petition originated from an order passed by the High Court condoning the delay in filing the Second Appeal.

6.1. An argument was advanced that the delay was occasioned as the party intended to invoke the review jurisdiction and also because of the pandemic having struck in the meantime and, therefore, once the Court found that the explanation offered by the litigant constitutes a sufficient cause, the Apex Court should not interfere with such order. It was further argued that the High Court was satisfied that the appellant was prevented by a sufficient cause and offered a reasonable explanation in this regard, the matter which should be decided on merit, should not ordinarily be nipped on the anvil of the limitation. The Apex Court took into considerations various decisions rendered by the Court and did not rule out that the application for condonation of delay, even in absence of any explanation, should be allowed by the Court as it is an ardent duty of the Court to decide the matter on merit.

7. We do not find any semblance of the observations which whittled down the applicability of the provisions contained under Section 5 of the Limitation Act, 1963 even if there is no explanation, far to speak of plausible explanation, offered in an application for condonation of delay. The Apex Court in the said judgment after noticing the observation made in the case of *A.B. Govardhan Vrs. P. Ragothaman*, reported in *(2024) 10 SCC 613*, held

"The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

8. In an another judgment rendered in the case of *Pathapati Subba Reddy (Died) by L.Rs. & others Vrs. The Special Deputy Collector (LA)*, reported in *2024 SCC OnLine SC 513 = 2024 INSC 286*, a Division Bench of the Apex Court has given a note of caution that in the garb of liberal or lenient approach the Court should not overshadow the purpose and the object of the Limitation Act and in an appropriate case which lacks complete explanation, there is no fetter on the part of the Court to dismiss the application for condonation of delay in the following:

"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."*

9. In a subsequent decision rendered in the case of *H. Guruswamy & others vs. A. Krishnaiah Since Deceased*

by LRs., reported in *2025 SCC OnLine SC 54 = 2025 INSC 53*, the Apex Court held that the question of limitation is not merely a technical consideration, but based upon a sound public policy and on the principles of equity as the Court should not permit the sword of Damocles to remain hanging over the head of the litigant. The Apex Court highlighted the principles governing the field of limitation being not a piece of legislation to destroy the rights of the parties, but is intended to bring quietus to a litigation in denying the reliefs from the Court of law if the litigant does not approach within the time stipulated therein.

10. We are conscious that the length of delay in approaching the Court may be relevant, but not the sole determinant factor, but the sufficiency of the cause is a paramount consideration and depends upon a case to case basis. There cannot be a straightjacket formula nor the applicability of the Section 5 of the Limitation Act can be squeezed and/or applied like Euclid's Theorem, but to be exercised in a pragmatic manner keeping in mind the rights of the parties and the equilibrium to be maintained on equity.

11. The aforesaid concept can be conveniently fortified by an enlightening observation of the Apex Court rendered in the above noted report, *H. Guruswamy (supra)*, which runs thus:

> *"16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay."*

12. The cumulative effect of the law enunciated in the above noted reports, indicates that the Court should adopt a lenient and liberal approach in considering an application for condonation of delay, but no discretion should be exercised in the above garb when the petition completely lacks any explanation. Even though the length of delay should not stand in the way of exercising discretion by the Court in condoning the delay, but the Court must travel on the circumference of the sufficiency

of the cause disclosed in the application for condonation of delay which has to be construed in a more reasonable manner keeping in mind that the purpose, for which it finds place in the statute book, is not frustrated. There is no quarrel that ordinarily the Court encourages the litigation to be decided on merit, but it does not dispense with the rigour of the provisions of Section 3 of the Limitation Act and the applicability of Section 5 thereof. The moment the Court finds that there is no explanation offered in the application for condonation of delay nor the documents annexed in support thereof, so-called explanation, connects a remotest nexus thereto, there is no fetter on the part of the Court in holding that the litigant was not vigilant in pursing the remedy and such delay attributes to the conduct of negligence on his part.

13. The above quoted paragraph-2 of the application for condonation of delay is bereft of any explanation which creates a fetter in the appellant in filing the appeal within the statutory period of limitation nor the medical documents are corroborative of the fact that the appellant was prevented by a sufficient cause in not preferring the appeal.

14. The aforesaid medical documents do not throw light on the obstacles having created into the appellant to file appeal on 17th March, 2025 after the common judgment was delivered on 22nd December, 2023.

15. We, thus, do not find that the explanation constitutes a sufficient cause within the meaning of Section 5 of the Limitation Act. Hence, the Interlocutory Application for condonation of delay is hereby dismissed. Consequently, the writ appeal stands dismissed being barred by law of limitation. All other pending interlocutory applications, if any, also stand disposed of accordingly. However, in the circumstances, there shall be no order as to costs.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 15th July, 2025//MRS/Laxmikant

Signature Not Verified
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Signed by: LAXMIKANT MOHAPATRA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 21-Jul-2025 11:43:51