



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 65 OF 2025

1. M/s Shyama Charan Agarwala
& Sons, Engineers & Builders,
Through its Sole Proprietor,
Shri Mahesh Chandra Agrawal,
Address: S-4, Woodrose Building,
Lokhandwala Complex,
Andheri (West), Mumbai 400053.
2. Shri Mahesh Chandra Agrawal,
Aged about 79 Years, Indian National
Proprietor of M/s Shyama Charan
Agarwala & Sons,
Address: 1101-2, 1A Green Acres,
Lokhandwala Complex,
Andheri (West), Mumbai 400053. ... Petitioners

Versus

1. Union of India,
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
2. Chief Engineer Navy, Kochi
Naval Base Post
KOCHI-682004
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),

- Vasco Military Engineer Services,
Vasco da Gama, Goa-403802.
3. Commander Works Engineers (Navy),
Mangoor Hills,
Vasco-da-Gama-403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
4. Garrison Engineer (Project) Naval Work,
Mangoor Hills, Vasco-da-Gama-403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
5. Engineer-in-Chief, Army HQ,
ARMY HQ, DHQ PO,
NEW DELHI-110011
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
6. Chief Engineer Southern Command,
HQ Southern Command
Engineers Branch, Pune-411011
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,

Vasco da Gama, Goa- 403802.

7. Chief Engineer Navy Mumbai
Chief Engineer Navy
Naval Base Post, Kochi-682004
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years,
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
8. Union of India
Through Chief Engineer Navy Mumbai
Shahid Bhagat Singh Marg, Colaba
Mumbai-400053,
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years,
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
9. Brigadier P.K. Puri,
Chief Engineer Navy
Naval Base Post, Kochi-682004,
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years,
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.
10. Shri R. Venkatesalu,
EE DCWE B/R, CWE (N)
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),

Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

11. Capt. K. V. G. K. Rangaraju,
AGE B/R, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

12. Shri C. Rajan,
AGE (P)E/M, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),

Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

13. Shri K. R. Sateesan,
B/R Gde I, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

14. Sub A. K. Patil,
E/M Gde I, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years

Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

... Respondents

15. Shri B. Chikkaputtiah,
AE AGE B/R, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years
Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

16. Shri C. T. Mathew,
B/R Gde I, GE (P) NW
Vasco-da-Gama - 403802
Through Mr. Suresh Singh Mehra
S/o of late K.S. Mehra, aged 37 years

Garrison Engineer (P),
Vasco Military Engineer Services,
Vasco da Gama, Goa- 403802.

*Mr. Shailendra Bhobe with Mr. Pranav Vaze, Advocates for
the Petitioner.*

*Mr. Raviraj Chodankar, Central Government Standing
Counsel for Respondent No. 1.*

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 25th APRIL, 2025.

PRONOUNCED ON : 5th MAY, 2025.

JUDGMENT

1. Heard learned Advocates for the parties.
2. Rule.
3. Rule is made returnable forthwith and with the consent of the parties; the petition is finally heard and disposed of.
4. The challenge in this petition is to an order dated 26.11.2024, passed by the District Court-3, South Goa at Margao (the Commercial Appellate Court), condoning delay of 29 days in filing a Commercial Appeal against the final order dated 04.11.2023 passed by the Commercial Court at Vasco Da Gama in Commercial Suit No. 3/2022/A; the Commercial Court had decreed the suit in favour of the present Petitioners/original Plaintiffs declaring the action of Respondent No. 2 (Original Defendant No. 2) in cancelling three contracts with the Plaintiffs to be illegal. The Commercial Court further directed the Defendants to further pay to the Petitioners a sum of Rs. 11 Crores with interest at 12% per annum from 22.05.1996 and further amount of Rs. 30,00,000/- as costs with interest thereon at 12% per annum from the date of the Decree till payment.
5. The Commercial Appellate Court, relying on *Esha Bhattacharjee v. Managing Committee of Raghunathpur*

Nafar Academy & Ors, reported in (2013) 12 SCC 649, has condoned the delay of 29 days in a Commercial matter mainly on the ground that the party seeking to condone delay would not stand to benefit by remaining absent from the proceedings; it has further condoned delay on the premise that the right of a party should not be defeated by a technical consideration due to indolence of its officers dealing with public money.

6. The main grounds and submissions on which the Petitioners, represented by Shri. Shailendra Bhobe, Advocate has assailed the impugned order are the following:

- (a) That the proceedings from which the application arose, was a Commercial suit, hence the normal indulgence shown in condoning delay in filing proceedings at the behest of the State would be misplaced, in the present case.
- (b) That the Defendants/Respondents have made sporadic appearances before this Hon'ble Court, and have repeatedly sought adjournments, causing undue delay in the advancement of the proceedings.
- (c) That the Defendants/Respondents have failed to file their written statement within the prescribed time

frame, have not produced any evidence in support of their case, and have elected not to cross-examine or examine the Plaintiffs' witnesses. As a consequence, the Plaintiffs/Petitioners, who are the decree holders, have suffered substantial prejudice and hardship due to the protracted delay in the adjudication of this commercial suit.

- (d) That the statement made by the Defendants/Respondents in their application for condonation of delay, asserting that Advocate Raviraj Chodankar was engaged as of 01.08.2023, is entirely false and misleading. The trial court record unequivocally demonstrates that the said Advocate's associate appeared in the proceedings substantially earlier, specifically on 30.06.2023.
- (e) Furthermore, the claim advanced by the Respondents that the judgment was discovered by the officer of the Appellants on 13.01.2024 upon inspection of the file in Vasco Court is manifestly false, as 13.01.2024 was a court holiday falling on a second Saturday, and thus, no such inspection could have been undertaken on that date. Reliance was placed on an affidavit dated 25.04.2025 on behalf of the Petitioner No. 1 along

with an affidavit of the same date of Advocate Mr. E. O. Mendes, who appeared before the Commercial Court for the applicant and who, on inspecting the file of the Commercial Court states that in the inspection register or files in that Court, there is only one entry on 12.07.2023 by the Respondents for inspection of the file and a second entry on 01.08.2024 in the record room register for inspection of the file. It was contended that the averment in the application for condonation of delay, more specifically in paragraphs 3 and 4 of the application are patently false. It was further submitted that the passing of the Decree on 04.11.2023 was known to the Respondents and the claim where the Officer checked the Court file on 13.01.2024 (which was a Court holiday) was false.

- (f) That the Respondents have displayed a pattern of prolonged negligence and delay, considering their failure to file a written statement, not producing evidence to substantiate their claims and their failure to cross examine any plaintiff witness. Their conduct appears to be deliberately negligent, ostensibly with the intent to prolong the proceedings unjustifiably.

- (g) That Section 5 of the Limitation Act is inapplicable to the present case for the purpose of condoning delay, as this is a suit of a commercial nature. Any appeal arising therefrom must be filed within a period of sixty days, as mandated under Section 13(1-A) of the Commercial Courts Act. Being a subsequent and special enactment, the provisions of the Commercial Courts Act shall prevail over the general limitations prescribed under the Limitation Act.

7. The Learned Advocate for the Petitioners relied on the following judgments to support his contentions:

- (i) ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai***, (2012) 5 SCC 157
- (ii) ***Union of India v. Jehangir Byramji Jeejeebhoy***, 2023 SCC OnLine SC 489
- (iii) ***H. Guruswamy v. A. Krishnaiah***, 2025 SCC OnLine SC 54
- (iv) ***State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.***, (2021) 6 SCC 460
- (v) ***M/s Ridha Fashions & Ors. v. M/s Nandi Fabrics***, RFA(COMM) 11/2025, Delhi High Court

8. *Per Contra* Learned Advocate shri. Raviraj Chodanakr for the Respondents submits that the Commercial Appellate Court has exercised a discretion in favour of the Respondents, which in normal course, should not be easily interfered by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. He submits that even though there may be some mistake in the dates, the delay of only 29 days which is negligible; it was further contended that the Court has exercised discretion under Section 5 of the Limitation Act in terms of the Judgment of the Supreme Court in *Esha* (supra), which holds that in matters where the State seeks condonation of delay, the approach of Courts exercising discretion should be liberal.

9. The point which falls for my determination in this petition is whether, considering the conduct of the Respondents during the course of the Commercial case, and immediately after its disposal, and for the reasons contained in the application for condonation of delay, the impugned order granting condonation can be sustained.

10. In considering the point for determination, it would be apposite to consider the case law on the parameters set down in these Judgments on which applications for condonation of delay should be allowed in Appeals arising from Commercial Suits.

11. In ***Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*** (supra), the Supreme Court has considered a case where the High Court has condoned delay in filing an Appeal at the behest of the Municipal Corporation where the reasons for condoning delay were concocted and the application suffered from total absence of any explanation as to why there was a delay in filing the Appeal. Considering these facts, it has held as under:

“24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal, of the matter on the ground of bar of limitation will cause injury to the public interest.”

12. In ***Union of India v. Jehangir Byramji Jeejeebhoy*** (supra), which is more recent pronouncement of the Supreme Court on the very same question, where a single Judge of this Court declined to condone the delay by the Union of India, in filing a

restoration application, the following observations have been made on how the jurisdiction is to be exercised:

“24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned.

26. The length of the delay is 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 appellants, it appears that they want to fix their own period of limitation for 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.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.”

The upshot of this decision is that in matters where exercise of discretion of a Court is called, where the State is a party, no special indulgence need be shown to such party. Further, the court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period to be determined at the whims and fancies of the appellants.

13. In ***H. Guruswamy v. A. Krishnaiah*** (supra), the Supreme Court considered a Judgment of the High Court condoning delay in filing an application for recall of a Decree under Order 9 Rule 13 without considering several pertinent facts. The relevant paragraphs of the Judgment are quoted below:

“13. We are at our wits end to understand why the filing the application for recall itself. High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.”

Thus, the Supreme Court holds that the Court considering the application stating grounds for condonation for delay cannot overlook all the circumstances which laid to the application, or condone delay ignoring these facts; it then held that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. In ***State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.*** (supra), the Supreme Court was deciding how an application under Section 5 of the Limitation Act is to be considered in the light of the scheme of the Commercial Court Act and the Arbitration Act. The relevant paragraphs of the Judgment are:

“34. The vexed question which faces us is whether, first and foremost, the application of Section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr George. The first important thing to note is that Section 13(1-A) of the Commercial Courts Act does not contain any provision akin to Section 34(3) of the Arbitration Act. Section 13(1-A) of the Commercial Courts Act only provides for a limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.

....

58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression

"sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims.

.....

62 Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in Ramlal v. Rewa Coalfields Ltd.⁷⁷ as follows: (SCR p. 771: AIR p. 365, para 12)

"12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done: the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14."

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act for appeals filed under Section 37 of the Arbitration Act that are governed by

Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

What is held in ***Borse Brothers*** (supra) is the following:

- (a) Merely because sufficient cause has been made out, there is no right in the Appellant to have delay condoned, and at this stage, diligence of the party and its bonafides may fall for consideration.
- (b) Given the object to be achieved by the Commercial Courts Act, including Appeals filed under it, is of speedy disposal, delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of Rule.
- (c) In a fit case, in which a party has otherwise acted bonafide and not in a negligent manner, a short delay beyond such period can in the discretion of the Court be condoned.

15. In *M/s Ridha Fashions & Ors. v. M/s Nandi Fabrics* (supra), the Delhi High Court was considering a matter concerning condonation of delay in filing a Appeal under the Commercial Courts Act, and has concluded thus:

“9. It is apparent from above that the question of condoning the delay in commercial disputes cannot be considered liberally. The court has to evaluate the reasons for the delay and the same can be condoned only where the court is satisfied that there is sufficient cause that prevented the appellant to file the appeal within the stipulated time. In the present case, there is no credible explanation for the inordinate delay of six hundred and five days in filing the present appeal.”

The Delhi High Court, after considering the Judgments of the Supreme Court in *Borse Bros.* (supra) has held that in matters of condoning delay in proceedings under the Commercial Courts Act, cannot be decided with a liberal approach.

16. More recently in *State of Madhya Pradesh v. Ramkumar Choudhary* (supra), the Supreme Court, after referring to *Jahangir Jeejeebhoy* (supra) and *Basavraj* (supra) has taken notice of the fact that a trend has set in, whenever an Appeal for condonation of delay is made, it is sought to be explained right from the time, limitation starts. With reference to what requires to be considered, the Supreme Court has held thus:

“7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private

litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say. 2 years or 3 years or 4 years till the end of the same. For example, if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1 day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal, But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: Ajit Singh Thakur Singh v. State of Gujarat, (1981) 1 SCC 495: AIR 1981 SC 733)”

In line with what is laid down above, the Appellate Commercial Court as also this Court, would be required to consider, whether the party seeking condonation has explained what came in is way that made it unable for the party to institute the proceedings/the Appeal between the 1st and the 60th day within limitation, and if it allows limitation to expire, the sufficient cause must establish that because of some event and circumstance arises before the limitation expired, it was not possible to file the Appeal within time.

17. In *Esha (supra)*, the Supreme Court has laid down the following broad principles whilst exercising discretion in condoning delay.

“ 21. From the aforesaid authorities the principles that can be broadly culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

These broad principles though, not laid down in a case governed by the Commercial Courts Act, do consider that lack of bonafide imputable to a party seeking condonation is a significant and relevant factor.

18. Recently in ***Jharkhand Urja Utpadan Nigam Ltd. & anr V/s Bharat Heavy Electricals Limited in Special Leave to Appeal (c) No. 9580/2025*** the Supreme Court, after consideration of the scheme of the Commercial Courts Act, and

the issue of condonation of delay in filing an Appeal under that Act, and further after considering the observations in ***Borse Bros.*** (supra) has held as under:

“28. The extent of applicability of Section 5 of the Limitation Act, 1963 to cases falling under the Commercial Courts Act, 2015 fell for consideration of the Supreme Court in Government of Maharashtra (2 supra).

29. The Supreme Court in Paragraph 19 of it's judgment in Government of Maharashtra (2 supra) discussed the statement of objects and reasons behind enacting of the Commercial Courts Act, 2015 and held that period of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed.

In paragraph 32, it held that the condonation of delay under Section 5 of the Limitation Act, 1963 has to be seen in the context of the object of speedy resolution of the dispute.

In paragraph 58, the Supreme Court held that given the object sought to be achieved under the Commercial Courts Act, 2015 i.e., the speedy resolution of the disputes, expression "sufficient cause" in Section 5 of the Limitation Act, 1963 is not elastic enough to cover long delays beyond the period provided by the appeal provision itself; and that the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims.

In other words, the Supreme Court indicated that in exercise of power under Section 5 of the Limitation Act, 1963 a delay beyond the period of 60 days from the date on which the appeal could have been filed can be condoned (i.e., below 120 days from the date of pronouncement of the judgment) by invoking Section 5 of the Limitation Act, 1963, but where there is negligence, inaction or lack of bona fides, such power ought not to be exercised.

*It went further in para 59 by observing that merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down.
(This rule would thus apply equally to instrumentalities of Government like the applicants herein).*

It held in para 62 that merely because sufficient cause has been made out in the facts of a given case, there is no right in the applicants or the appellants to have the delay condoned.

It concluded in para 63 as under:

“63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals pled under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(l-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party’s inaction, negligence or laches.”

(emphasis supplied)

30. Thus, the Supreme Court in Government of Maharashtra (2 supra) permitted condonation of delay beyond 60 days in a case falling under the Commercial Courts Act only by way of exception and not by way of rule. If the applicants for condonation of delay had not acted bona fide and had acted in a negligent manner as in the instant case, the delay is not liable to be condoned.

32. We may also point out that the applicants were represented before the Commercial Court, Ranchi by counsel and the judgment was obviously pronounced in the presence of the counsel.

Though the order was pronounced on 09.10.2023 it appears that the application for issuance of certified copy was made on 30.08.2024, it was made ready on 07.09.2024, and the appeal was filed on 04.10.2024.

If the Commercial Court had not communicated the copy of its judgment to the applicants within the reasonable time, it was incumbent on the part of the counsel for the applicants or the employees in the Legal Department of the applicants to apply for issuance of certified copy from the Commercial Court, but they have failed in their duty to apply for it when they did not receive it within a reasonable time.

Their negligence resulted in the inordinate delay of 301 days in filing this appeal.

34. They also cannot take advantage of the negligence of the counsel engaged by them in not informing the applicants about the judgment of the Commercial Court. This is because the applicants have a Legal Department and employees engaged by the applicants in that department have a duty to monitor what is happening in the cases to which the applicants are parties, keep track of the progress of the said cases and the decisions therein, and ensure that applications for issuance of certified copy are made to the concerned court so that the appeals, if required, can be preferred within the period of limitation prescribed by law.”

19. It is in the background of the aforementioned principles that the Commercial Appellate Court ought to have decided the application for condonation of delay, and this Court in its supervisory jurisdiction, would have to assess the correctness and legality of that order on the same lines.

20. Before applying the aforementioned principles to the fact of this case, the following facts which arise from the record would require consideration:

- (i) The Petitioners initially instituted a Special Civil Suit No. 41/1996/A on the 22.05.1996. Subsequently, the said suit was transferred to the jurisdiction of the Commercial Court at Vasco da Gama, whereupon it was re-registered as a Commercial Suit in accordance with the

provisions of the Commercial Courts Act, 2015, and assigned the new designation Commercial Suit No. 3/2022/A.

- (ii) According to the Roznama records, the Respondent (the Union of India) had, during the pendency of proceedings before the District Judge-2, South Goa, Margao, filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. The said application was dismissed by the said Court on 04.11.2015. Aggrieved by this order, the Respondent (Union of India) instituted a Writ Petition before this Court, being Writ Petition No. 155/2016, filed on 01.02.2016. The said petition was subsequently dismissed on 16.06.2016, upon the request of the Counsel for the Union of India, who sought to withdraw the petition on instructions.
- (iii) As can be seen from the Roznama records, the Respondents were afforded multiple opportunities to submit a written statement in the Commercial Suit, spanning from 15.01.2016 to 29.01.2021 (5 years). Despite these repeated opportunities, the Respondents failed to file their written statement;

None of the defendants remained present before the Court during this period.

- (iv) The opportunity to file a written statement not having been taken for 5 years, the Court, on 23.02.2021, directed the Plaintiff to lead evidence through its first witness to be examined on 08.03.2021 and the second witness on 09.03.2021.
- (v) On 08.03.2021, none remained present for the Defendants/Respondents herein, on which the suit proceeded ex-parte, on 09.03.2021 evidence was recorded of the Plaintiff's witness and further evidence was recorded on 12.08.2021 and 24.08.2021 on which dates, none remained present for the Defendants. The matter was then adjourned to 08.10.2021.
- (vi) On 05.10.2021(before the next date), the learned counsel representing the Defendants/Respondents Nos. 1 to 6 appeared before the Court and stated that she would obtain instructions to move an application for setting aside the order setting the Defendants ex-parte. None remained present for the Defendants until 26.10.2021 when they filed an application under Order IX Rule 9 of the Civil Procedure Code to recall the order setting the

Defendants ex-parte. This application was registered as Exhibit D-131 before the Trial Court.

- (vii) Even after filing such an application (Exhibit D-131), the Defendants remained absent on 30.10.2021 and after an adjourned date was fixed on 08.11.2021, Defendants appeared in the afternoon session of the Court session. Thereafter, several adjournments were sought by the Defendants on 08.11.2021, 10.11.2021, 20.11.2021, 27.12.2021, 04.01.2022, 12.01.2022, and written arguments came to be filed 29.01.2022, apart from arguments on Exhibit D-130 and D-133 having been concluded.
- (viii) At this stage, on 11.02.2022, the matter was transferred to the Principal District Court at Margao for the purpose of allotment to the appropriate Commercial Court; between the period 07.04.2022 and 21.12.2022, the Defendants remained absent. An opportunity was given on 21.12.2022 to the Defendants to file written arguments on Exhibit D-133, which was not filed on 13.01.2023 when the Defendants remained absent and ultimately on 21.01.2023, Exhibit D-130 and Exhibit D-133 were dismissed.

- (ix) On the adjourned date i.e. on 16.02.2023, the Defendants remained absent and on the Plaintiffs' completing recording evidence of PW1, the deposition of PW2/Jayant and of PW3, the Plaintiffs closed their evidence; the matter was adjourned for final arguments to 04.04.2023; the Final Arguments were heard on that date with the Defendants/Respondents remaining absent. The matter was then fixed for Judgment on 06.05.2023, on which date none appeared for the Defendants and thereafter on 30.06.2023, again for pronouncing Judgment.
- (x) On 30.06.2023, Adv. Chodankar filed a Memo of Appearance on behalf of Defendant No. 1 and the matter was adjourned to 01.08.2023, when a Vakalatnama was filed by the Advocate representing Defendant No. 1. On 08.09.2023, the said Advocate for the Defendants requested for an adjournment to enable perusal of the case file and to take appropriate steps in the matter.

There is no record of what steps were taken to challenge the order dated 21.01.2023 dismissing Exhibit D-133;

- (xii) On 20.10.2023, when the matter was taken up for pronouncing Judgment, none was present for the Defendants and the Judgment was ultimately pronounced on 04.11.2023 decreeing the suit in part in favour of the Plaintiffs/Petitioners, again with the Defendants remaining absent.
- (xiii) According to the pleadings in paragraph 3 of the application for condonation of delay, it is the Respondent's case that it was only when the concerned Officer checked the file of the said suit in the Vasco Court on 13.01.2024, that they were made aware of the Decree dated 04.11.2023. The application states in paragraph 4 thereof that the Officer checked the file in the Vasco Court on 13.01.2024(which incidentally was a second Saturday, when the Court was closed) and claims that on that date, he gained knowledge of the Decree dated 04.11.2023, after which, he addressed a letter dated 13.01.2023 to the Advocate for the Respondents, who sought a briefing and parawise comments from the Respondents.
- (xiv) The application claims at paragraph 6 that the certified copy of the Judgment and Decree was

applied for on 18.01.2024, ready on 20.01.2024 and delivered on 23.01.2024. The application nor the Memo of Appeal states the date given by the Court for collection of the certified copy.

- (xv) The Appeal was filed on 02.02.2024 and the Memo of Appeal as also application for condonation of delay is silent as to what steps were taken between 23.01.2024, when the certified copy was obtained on 02.02.2024 when the Appeal was lodged.

21. The events pertinent to this matter have been delineated in chronological sequence in a tabular form, as provided below:

DATE	EVENT
22.05.1996	Special Civil Suit No. 41/1996/A Filed
15.01.2016 to 23.02.2021	The Respondents failed to file the Written Statement during a period of more than 5 years.
08.03.2021	The Commercial Court decides to proceed ex-parte and post the matter for recording evidence between 09.03.2021 and 08.09.2021; the Defendants did not appear during this period.

05.10.2021 to 21.01.2023	Advocate for Defendant Nos. 1 to 6 appears and states that she would take instructions to set aside the order to proceed ex parte. Application to set aside order to proceed ex parte against the Defendants, filed on behalf of Defendant Nos. 1-6 (EXHT. 130) on 26.10.2021. thereafter, Defendants remained absent till the application was dismissed on 21.01.2023.
16.02.2023 to 06.05.2023	Plaintiffs evidence was completed (3 witnesses) and final arguments heard, matter placed for Judgment.
30.06.2023	Advocate R. Chodankar files Memo of Appearance for Defendant No. 1. (EXHT. D/142) and files Vakalatnama for defendant No. 1 on 01.08.2023.
08.09.2023	Advocate R. Chodankar, representing Defendant No. 1 seeks time to peruse the file and take steps. Matter was fixed for Judgment on 20.10.2023. Suit partly decreed in favour of the Petitioners on 04.11.2023.
13.01.2024	The Officer for the Applicant claims he had no knowledge and he checked the file on

	13.01.2024 (on the day when the Court was closed), after which certified copy was applied for on 18.01.2024 and delivered on 23.01.2024.
02.02.2024	Commercial Appeal filed by the Respondents before the Commercial Appellate Court, South Goa, Margao- Goa
03.02.2024	Application for Condonation of Delay (Civil Misc. Application No. 61/2024) filed before the Court of District Judge-3, South Goa, At Margao by Union of India
02.04.2024	Registration date of the Civil Misc. Application No. 61/2024
03.09.2024	Petitioners filed Affidavit in Reply to Civil Misc. Application No. 61/2024

22. What is noticeable from the conduct of the Respondents during the pendency of this suit was that for a period of almost 20 years, from 24.05.1996 when they were served with the summons of the suit till 21.01.2015, the Defendants agitated the question of jurisdiction through an Appeal before the High Court claiming that adjudication could be only under the Arbitration

Act. Having failed in that endeavour, on 04.11.2015, after rejection of an application under Section 8 of the Arbitration Act, Defendants were directed to file their written statement on 15.01.2016. Written statement was not filed from 2016 to 2021(5 years). On 23.02.2021, opportunity to file written statement was closed and the matter posted for evidence on 08.03.2021. The Defendants did not appear on that date, for 7 months, letting the matter proceed ex-parte until 05.10.2021. During the above mentioned period, evidence of 3 Plaintiff's witnesses came to be recorded with cross examination being closed as Defendants remained absent. On 26.10.2021 the Defendants appeared through their Advocates and late an application under Order 9 Rule 9 CPC.

23. Even thereafter, one more year was spent by the Defendants to argue its application under Order 9 Rule 9 CPC, which was ultimately dismissed on 21.01.2023. This order was also not challenged and has attained finality. The Defendants remained absent on 21.01.2023, when this order was pronounced. The matter was then posted between 16.02.2023 and 30.06.2023 for final arguments, which were heard in the absence of the Defendants. On 30.06.2023, a Memo of appearance came to be filed by the Advocate of the Defendants, after which on 08.09.2023, the said Advocate sought an adjournment to go through the file to take steps on behalf of the Defendants. No

steps were taken and none appeared thereafter when the Judgment was pronounced on 04.11.2023.

24. What is clear from this fact is that even on 30.06.2023 and 08.09.2023 the Defendants were represented, but took no steps in the matter and they are presumed to be full knowledge of the fact that all stages in the suit had been completed and the matter was listed for Judgment on 20.10.2023. They chose to remain absent on that day and Judgment was pronounced on 04.11.2023. clearly therefore, the Defendants cannot take a stand in their application for condonation of delay such as the one taken in paragraph Nos. 2, 3 and 4 of the application, where they state that the final orders were not known to the Applicant and that they were not aware of the matter to be able to brief their advocate, or the Advocate for the Applicant could not do much in the matter, hence restrained himself from appearing in the matter. The facts stated in the Roznama, bear a completely different story; the Defendants were fully aware of the matter atleast until 20.10.2023, which date was to their knowledge and the date of Judgment ought to have been within their knowledge since their Advocate did attend the matter on 08.09.2023.

25. Apart from the above facts, which shows that the statements made in the application are contrary to the record, the application goes on to state that the Officer of the Respondent No. 1 checked the file of the Commercial Court on 31.01.2024

and gained knowledge on the inspection of the file that it had been decreed on 04.11.2023. It is a matter of common knowledge that 13.01.2024 was a second Saturday when the Courts are closed in state of Goa; the statement is therefore untrue. That apart, an affidavit came to be filed before this Court of the Petitioner supported by the affidavit of the Advocate appearing for the Plaintiffs in the suit, stating that an application was filed before the Trial Court to inspect its records on 21.04.2025, and after obtaining an order of the concerned Court granting inspection, only two entries for inspection was seen on the record of 12.07.2023 and 01.08.2024, which coincide with the statements made by the Advocate for the Defendants recorded in the Roznama on 01.08.2023. The record of inspection of the file by the Defendants on 01.08.2024 is during the pendency of the application for condonation of delay two months prior to the same day granted on 26.11.2024. The statement in the application for condonation of delay that inspection of the file was taken on 13.01.2024, also appears to be false on contrary to the record. This statement does not disclose the name of the officer nor does it disclose the name of the officers who were newly transferred to Goa as referred to in paragraph No. 2. Considering and applying the various guidelines laid down by the Supreme Court in the Judgments referred to above, the bonafides of the application are in serious doubt and the

statements made therein appear to be patently false and contrary to the record. In any event the entire conduct of the Defendants in letting the suit go without contest, with no written statement being filed, any cross examination being conducted, or even throwing challenge to the refusal to recall the order setting the matter ex-parte, itself demonstrates that the Defendants were neither serious about contesting the matter or putting sporadic appearances only to delay the proceedings, is also considered to be with lack of bonafides.

26. Again, applying the observations made in the Judgments referred above, one sees that the Respondents have not explained in the application why they were prevented from applying for the certified copy immediately on gaining knowledge of the Decree (According to the affidavit, on 13.01.2024) and instead applied for a certified copy only on 18.01.2024. Further no reasons are assigned as to why, the Appeal was not filed even after having received the copy of the impugned Decree on 23.01.2024, but was filed only on 02.02.2024. In fact the record reveal that the application for condonation of delay (CMA No. 61/2024) was filed on 03.02.2024, after the Memo of Appeal was lodged on 02.02.2024 and was registered only on 02.04.2024.

27. Clearly therefore, none of the facts referred to above would entitle the Respondents to an order exercising discretion under

Section 5 of the Limitation Act in their favour. Perusal of the impugned order of the District Court would show that none of these facts have been considered. The District Court has only referred to *Esha* (supra) and in a single paragraph concluded that there would be no benefit to the Respondents by remaining absent from the Commercial proceedings. It further holds that the delay is only 29 days and since an Appeal is valuable right of the party, the Respondents could be compensated with costs of Rs. 3000/- (Rupees Three Thousand only). The order has been passed in contravention of the principles laid down by the Supreme Court in the matters to be considered whilst deciding an application for condonation of delay in filing of a Commercial Appeal. The order has been passed without considering the bonafides which are required to be shown by the Applicant, both, in prosecuting the suit and in obtaining certified copies and filing the Appeal diligently. The impugned order being devoid of these considerations and contrary to the principle settled by this Court and the Supreme Court referred to above, render it unsustainable. The same is therefore quashed and set aside.

28. At this stage, it is submitted by Mr. Raviraj Chodankar, learned Advocate appearing for Respondent No.1 that the Commercial Suit itself was not maintainable and consequently, the present Writ Petition is also not maintainable, since it has been filed in the name of original Plaintiff (M/s Shyama Charan

Agarwala & Sons), which is a proprietorship concern. According to him, the plaint discloses that Plaintiff No. 1 to be a proprietorship concern while Plaintiff No. 2 is its sole proprietor. He submits that according to the Special Execution Application No. 01/2025/A which was produced before this Court wherein, Decree Holder is shown as Agarwal Family Trust, through its trustee Manish Agarwal who is son of Plaintiff No. 2, proprietor of Plaintiff No.1. He has taken me to the application dated 30.01.2025 which he has now placed on record, a Trust Deed dated 15.04.2016 executed by the Decree Holder wherein a family Trust was formed. The application seeks leave to allow the said Trust to pursue execution proceedings by virtue of the assignment of the Decree under the Trust Deed dated 15.04.2016. He has also taken me to the various clauses of the Trust Deed, more particularly recital (b), which states the purpose for which the Trust was formed in schedule 4 of the Trust Deed which specifies Civil Suit No. 41/1996 which is registered as Commercial suit No. 3/2022/A as one of the assets of Plaintiffs No.2 which is now vested as Trust property in the said Trust. For all these grounds he submits that the Writ Petition is filed at the behest of the M/s Shyama Charan Agarwala & Sons (Plaintiff No.1) and Mahesh (Plaintiff No. 2) is not maintainable.

29. The suit at the time the Decree was passed was in favour of Shyama Agarwala and Sons. None of these objections appeared

to have been raised as grounds of the Appeal before the Commercial Appellate Court, nor are they pleaded in the application for condonation of delay before the Commercial Court. Further, even the Respondents have challenged the original Civil Court's Decree before the Commercial Appellate Court on the premise that it was the present Petitioners, who are the Decree Holders in whose favour the Commercial Suit was finally Decreed. It appears that these objections are now being raised notwithstanding the fact that none of these objections have been taken as grounds of a Appeal before the Appellate Court, nor have been stated in the application for condonation of delay. These grounds could not be considered for the purpose of deciding the application for condonation of delay. The question of locus standi ought to be founded on the facts which were before the Commercial Appellate Court when the application for condonation of delay was decided and not on the basis of some extraneous documents produced before this Court today. Even the ground of locus standi of the Petitioners otherwise requires to be rejected, since these objections were not before the Commercial Appellate Court whilst condoning the delay. The preliminary objections and objections in locus standi stands rejected.

30. For the above reasons, this petition will have to be allowed. Consequently, the impugned order dated 26.11.2024, passed by

the District Judge-3, South Goa acting as the Commercial Appellate Court, condoned the delay and allowing Civil Misc. Application No. 61 of 2024, stands quashed and set aside. Consequently, Civil Misc. Application No. 61 of 2024 stands dismissed. If any Commercial Appeal has been registered, as a consequence of the impugned order, the same shall be considered as dismissed, in view of this order.

31. Rule is made absolute in terms of prayer clause (b) of the petition. No costs.

VALMIKI MENEZES, J.