*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

+ C.R.P.No.2994 OF 2024

% 02.05.2025

M/s. Indus Hospitals, rep. by
its Chairman, Maharanipeta,
Visakhapatnam.

……Petitioner

And:

$ Rajeev Lochan Singh

….Respondent.

!Counsel for the petitioner: Sri Suresh Kumar, learned counsel representing Ms. Ramani Annam

^Counsel for the respondent : Sri Rajeev Lochan Singh (party-in-person)

<Gist:
>Head Note:
? Cases referred:
1.(2020) 19 SCC 154
2.AIR 2014 SC 746
3.(2024) 7 SCC 433
4.(2020) 19 SCC 154
5.2022 SCCC OnLine SC 620
6. (2024) 9 SCC 148

HIGH COURT OF ANDHRA PRADESH

* * * *

C.R.P.No.2994 OF 2024

DATE OF JUDGMENT PRONOUNCED: 02.05.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3.	Whether Your Lordships wish to see the fair copy of the Judgment?	Yes/No

RAVI NATH TILHARI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

C.R.P.No.2994 OF 2024

JUDGMENT:

Heard Sri Suresh Kumar, learned counsel representing Ms.Ramani Annam, learned counsel for the petitioner and Sri Rajeev Lochan Singh, the respondent (party-in-person).

2. This revision petition under Article 227 of the Constitution of India has been filed by the petitioner M/s. Indus Hospitals, represented by its Chairman at Visakhapatnam challenging the order dated 20.09.2023, passed in R.P.No.1380 of 2022, by the National Consumer Disputes Redressal Commission, New Delhi (in short, the National Commission).

3. The respondent herein Sri Rajeev Lochan Singh filed a Consumer Complaint No.102 of 2014 against the opposite parties 1 and 2 i.e. (1) M/s.Indus Hospitals, represented by its Chairman and (2) Dr. Jaya Sai Sehkhar B. Consultant Urologist before the District Consumers Forum-II, Visakhapatnam (in short, District Forum) seeking the reliefs to direct them to pay an amount of

Rs.18,00,000/- along with compensation of Rs.50,000/- towards damages and costs for legal expenses towards the alleged medical negligence and deficiency in service in performing the surgery of removing the stones. The opposite parties 1 and 2 in the consumer complaint filed their counter and inter alia denied the material averments. The District Forum, answered the points as framed in favour of the complainant/present respondent and held him entitled for compensation of Rs.12,00,000/- to be paid by the 1st opposite party/the present petitioner-hospital along with the costs for legal expenses of Rs.10,000/-. With respect to the 2nd opposite party doctor, it was held that the complainant was not entitled to claim any amount from the doctor, there being an indemnity policy between the hospital and the doctor. Complaint was, thus allowed in part by order dated 24.07.2017 granting 45 days from the date of receipt of copy of that order for compliance.

4. The hospital and the doctor both filed F.A.No.25 of 2018 before the Andhra Pradesh State Consumer Disputes Redressal Commission, Vijayawada (in short, the A.P. State Commission). The respondent complainant also filed F.A.No.620 of 2018 being dissatisfied with the quantum of compensation awarded by the District Forum. The A.P. State Commission vide common

judgment/order dated 01.07.2022 dismissed the appeal of the present petitioner and the appeal filed by the respondent was partly allowed modifying the order of the District Forum, and enhancing the compensation from Rs.12,00,000/- to Rs.15,00,000/- apart from awarding Rs.10,000/- towards costs.

5. M/s. Indus Hospitals filed two revision petitions before the National Commission. Revision Petition No.1380 of 2022 was filed against the dismissal of the F.A.No.25 of 2018 and Revision Petition No.1417 of 2022 was filed, partly allowing the First Appeal No.620 of 2018 of the respondent. Both the revision petitions were filed beyond the period of limitation. I.A.No.10112 of 2022 in R.P.No.1380 2022 and I.A.No.10412 of 2022 in R.P.No.1417 of 2022 were respectively filed for condonation of delay. The aforesaid applications after contest by the respondent were dismissed by the National Commission, which did not find any justifiable reasons to condone the delay and so both the revision petitions were also dismissed as barred by limitation by the common judgment/order dated 20.09.2023.

6. The Indus Hospitals challenged the order of the National Commission before the High Court of Delhi in C.M.(M) No.1818 of 2023. The said C.M(M) along with the batch matters were

disposed of vide judgment dated 12.09.2024, holding that those petitions, except the petition which challenged the order of the National Commission arising out of the order of the State Commission of Delhi, were not maintainable before the High Court of Delhi for want of jurisdiction. The petitioners, therefore were given liberty to pursue appropriate remedy by filing the petition before the respective jurisdictional High Court. It was clarified that the Delhi High court had not gone into the merits of the order of the National Commission challenged before it.

7. Thereafter, the petitioner has filed the present C.R.P No.2994 of 2024 under Article 227 of the Constitution of India.

8. The learned counsel for the petitioner submitted that the cause shown was sufficient. The National Commission acted illegally in holding that there was no sufficient cause. He submitted that there was no negligence nor any malafide in causing the delay in filing those Revision Petitions. He submitted that to advance substantial justice to afford opportunity of hearing the liberal approach should have been adopted and the delay of short duration should have been condoned. He submitted that because of the misplacement of the entire file by the advocate

during his travel, the R.P(s) could not be filed before the National Commission within limitation period.

9. The learned counsel for the petitioner placed reliance in the case of **Manager, Indusind Bank Limited and another vs. Sanjay Ghosh** (Civil Appeal Nos.4104 of 2022 of the Hon'ble Apex Court, to contend that the question of limitation should not be examined with a view to decline the condonation but to do substantial justice.

10. The learned counsel for the petitioner further placed reliance in **Singal Udyog v. National Insurance Co., Ltd**[1]**,** to contend that the circumstances not being so alarming, the petition should not have been rejected on the ground of delay and in any case costs could have been awarded to the respondent.

11. Sri Rajeev Lochan Singh, submitted that the State Commission passed the order on 01.07.2022. So the period of limitation of 90 days should be counted from 01.07.2022 which was completed on 29.09.2022. In Revision Petition No.1380 of 2022 there was the delay of 30 days and not 20 days as claimed by the petitioner. He submitted that the starting point of the limitation would be from the date of the order i.e., 01.07.2022.

[1] (2020) 19 SCC 154

So, it was wrongly mentioned in I.A.No.10112 of 2022 in R.P.No.1380 of 2022 that there was delay of 20 days. He submitted that in the application, the condonation of delay was prayed only for 20 days and not even for 21 days. So, there was no prayer to condone the delay of full 21 days of delay.

12. Sri Rajeev Lochan Singh, further submitted with respect to the application for condonation of delay in Revision Petition No.1417 of 2022 that the petition should have been filed by 29.09.2022 but it was filed on 07.11.2022. There was delay of 39 days counting from 01.07.2022. The petitioner did not request for condonation of delay of any specified actual number of days as that space of the delay of how many days, was left unfilled. He submitted that in both the applications the delay was tried to be justified for the period from 09.07.2022 to 28.10.2022, but there was further delay from 29.10.2022 to 07.11.2022 in R.P.No.1417 of 2022. He submitted that in I.A.No.10412 of 2022, the request for condonation of delay was in filing the petition against the order in F.A.No.25 of 2018 arising out of C.C.No.102 of 2014. In I.A.No.10112 of 2022 in R.P.No.1380 of 2022 also, submitting as arising out of F.A.No.25 of 2018. His submission was that the prayer to condone the delay in both the I.As, though filed

separately in two Revision Petitions were to condone the delay, thus, in one R.P only arising out of F.A.No.25 of 2018. Though the application was filed in R.P.No.1417 of 2022, as well, but the prayer could not be with respect to that R.P. which arose out of F.A.No.620 of 2018 and not out of F.A.No.25 of 2018.

13. The respondent submitted that no proof was filed about the advocate who lost the case file in transit. The date of travel or filing of the FIR to the Police for loss of file, was not disclosed any such incident was also not reported in the newspaper. He submitted that there was negligence in filing the revision petitions belatedly. So, the delay could not be condoned. He submitted that there was no illegality in the order of the National Commission. He placed reliance in the order dated 31.10.2023 of the National Commission of Delhi in **Ravi Saxena vs. Travel Expertz and others** in F.A.No.503 of 2023, in which the judgment of the Hon'ble Apex Court in **Basawaraj and others vs. The Spl. Land Acquisition Officer**[2] was considered. He also relied in the case of the Hon'ble Apex Court in **Lingeswaran Etc., Versus Thirunagalingamin Special Leave to Appeal (C) Nos. 2054-2055/2022 decided on 25.02.2022,** to contend that

[2] AIR 2014 SC 746

the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds. He prayed to dismiss the C.R.P and to award costs of the litigation.

14. In reply the learned counsel for the petitioner submitted that in both the revision petitions, respective applications for condonation of delay, were filed. In R.P.No.1417 of 2022 in the application, the space for filing the actual days of delay remained unfilled. There was also some clerical mistake in the application as the correct number of days delay could not be mentioned and further incorrectly F.A.No.25 of 2018 was mentioned instead of F.A.No.680 of 2018. He submitted that in both the Review Petitions, same applications were prepared and making corrections as aforesaid, skipped inadvertently, but on that count, it could not be said that there was no application for condonation of delay filed in R.P.No.1417 of 2022.

15. Learned counsel for the petitioner further submitted that so far as the days of delay is concerned, the starting point of limitation would be from 09.07.2022 as the copy of the order was received on that date. It would not be from the date of the order

i.e 01.07.2022. He submitted that the difference between days of delay 20 or 21 in one R.P and 30 or 39 in the other R.P, would not affect condonation as the entire delay was explained and the prayer was for condonation of delay to all such period, on the grounds stated in those applications.

16. I have considered the submissions advanced by both the sides and perused the material on record.

17. The point for determination in this C.R.P is whether the order of the National Commission dated 20.09.2023 dismissing the Petitioner's Application for condonation of delay finding no sufficient cause and consequently dismissing the revision petition as barred by limitation, is legal or it calls for interference?

18. The revision petition No.1380 of 2022 was filed on 28.10.2022. Revision Petition No.1417 of 2022 was filed on 07.11.2022. Both the revision petitions were against the order of the State Commission dated 01.07.2022 filed before the National Commission under Section 58(1)(b) of the Act, 2019.

19. In I.A.No.10112 of 2022, in R.P.No.1380 of 2022 the delay was said to be of 20 days in filing the revision petition.

20. In I.A.No.10412 of 2022, the actual days of delay was not mentioned and the space was left blank though it was stated that

the delay was from 09.09.2022 to 28.10.2022. This Revision Petition No.1417 of 2022 was filed on 07.11.2022 and so there was a further delay of 10 days after 28.10.2022.

21. The Consumer Protection Act, 2019 does not provide any limitation period for filing the revision under Section 58(1)(b).

22. Section 58(1)(b) reads as under:

"Section 58(1)(b) in Consumer Protection Act, 2019

"58. Jurisdiction of National Commission –

(1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction -

(a) to entertain …….

(b)to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

23. The Consumer Protection (Consumer Commission Procedure) Regulations, 2020 (for short, the Regulations, 2020) have been framed in exercise of the powers conferred by Section 103(1) of the Act, 2019.

24. Regulation 14 of the Regulations, 2020 reads as under:

> "14. Limitation-(1) Subject to the provisions of sections 40, 41, 50, 51, 60, 67 and 69, the period of limitation in the following matters shall be as follows:-
>
> **(i) Revision Petition shall be filed within ninety days from the date of receipt of certified copy of the order;**
>
> (ii) application for setting aside the ex-parte order under section 61 or dismissal of the complaint in default shall be maintainable if filed within thirty days from the date of the order or date of receipt of the order, as the case may be;
>
> (iii) an application for review under sections 40, 50 and 60 shall be filed to the District Commission, the State Commission and the National Commission, respectively, within thirty days from the date of the order;
>
> (iv) the period of limitation for filing any application for which no period of limitation has been specified in the Act or the rules or in these regulations shall be thirty days from the date of the cause of action or the date of knowledge.
>
> **(2) Subject to the provisions of the Act, the Consumer Commission may condone the delay in filing an application or a petition referred to in sub-regulation (1) if valid and sufficient reasons to its satisfaction are given.**

25. So, under Regulation 14 of the Regulations, 2020, the period of limitation to file the revision petition under Section 58(1)(b) of the Act, 2019, is 90 days from the date of receipt of certified copy of the order.

26. In the present case, the order of the State Commission is dated 01.07.2022. A perusal of the copy annexed with the petition shows that the same was dispatched on 07.07.2022. The petitioner has stated that the copy of the order was received on 09.07.2022. There is no dispute raised on the date of such receipt. The contention of the respondent therefore that, the period of limitation would be from the date of the order i.e., 01.07.2022, so as to count the days of delay as 30 and 39 days in the respective R.P(s) cannot be accepted. This court is of the view that the period of limitation will start from the date of receipt of copy of the order which is 09.07.2022. R.P.No.1380 of 2022 was filed before the National Commission on 28.10.2022. Excluding the date of receipt of the copy of the order as also the filing date, this revision was beyond time by 20 days.

27. Similarly, the delay in filing R.P.No.1417 of 2022 before the National Commission would be 30 days as this revision was filed on 07.11.2022, and not of 39 days as contended by the respondent.

28. In R.P.No.1417 of 2022, there was also mistake in I.A.No.10412 of 2022 as the space was left blank and the actual days of delay was not filled and only w.e.f 09.09.2022 to 28.10.2022 was mentioned. Further, instead of F.A.No.680 of 2018, incorrectly F.A.No.25 of 2018 was mentioned. The same might be clerical error as was submitted by the learned counsel for the petitioner that in both the revisions, the applications were prepared and though required to be corrected in R.P.No.1417 of 2022, could not be corrected due to inadvertence. On this point, observing that the petitioner ought to have taken due care, this Court is not inclined to accept the submission of the respondent that in view thereof there was no prayer, to condone the delay of complete days or to condone the delay in R.P.No.1417 of 2022 arising out of F.A.No.680 of 2018.

Such a plea of the respondent is too technical to be accepted.

29. Now coming to the aspect of condonation of delay, it is well settled position in law that the delay cannot be condoned on mere asking. Unless the cause shown is sufficient the delay cannot be condoned. It is, also well settled that it is not the length of delay but the sufficiency of the cause shown which matters. If the cause shown is sufficient, any length of delay the court may condone. If there is no sufficient cause shown the delay even of a shorter period, may be fatal which cannot be condoned.

30. In ***State (NCT of Delhi) v. Ahmed Jaan*** **reported in (2008) 14 SCC 582**, the Hon'ble Apex court held that what counts is not the length of the delay, but the sufficiency of the cause shown. The relevant part of paragraph 11 is as under:

> "11. "8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay, but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion…"

31. It is further settled that the law of limitation may affect a party harshly but it is to be applied with all its regour when the statute so prescribe and the court; has no power to extend the period of limitation on equitable grounds.

32. In **Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81** the Hon'ble Supreme Court held, in Para 12 as under:

> "12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

33. Recently in **Pathapati Subba Reddy (Died) By L.Rs. vs Special Deputy Collector (LA) 2024 SCC OnLine SC 513**, the

Hon'ble Apex Court reiterated the principles laid down in **Basawaraj** (supra). Paras 25 to 26 of **Pathapati Subba Reddy** (supra) are as under:

> "25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:
>
> > "15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time

> condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it amounts to showing utter disregard to the legislature.
>
> (emphasis supplied)

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 doesnot 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."

34. I.A.No.10112 of 2022 as also in I.A.No.10412 of 2022, in the respective revision petitions, the ground explaining the delay and for condonation was the same.

35. Paras 1 to 4 of I.A.No.10112 of 2022 in R..No.1380 of 2022 read as under:

> "1. The present revision petition is being filed against the order dated 01.07.2022 passed by the Hon'ble A.P. State Consumer Disputes redressal Commission at Vijayawada in Appeal No.25 of 2018.
>
> 2. The petitioner after receiving the copy of the order on 09.07.2022 has entrusted to one advocate for the purpose of filing revision who misplaced the entire file in travelling. Therefore, he applied for a certified copy of the impugned order and the same was received on 22.09.2022. then matter has been entrusted to present advocate.
>
> 3. There is delay of 20 days in filing the present appeal i.e from 09.07.2022 to 28.10.2022.
>
> 4. That after getting the certified copy of the impugned order, the petitioner was in the search of another advocate for filing the revision against the said order and as such the petitioner could not file the revision petition against the impugned order within the time prescribed by the law. The delay is neither intentional nor wanton only due to the above reason."

36. The cause as shown by the petitioner is that after receiving the copy of the order on 09.09.2022, the matter was entrusted to one advocate for the purpose of filing revision, who misplaced the entire file in travel. Therefore, the petitioner applied for a certified copy, again and the same

was received on 22.09.2022 and then the matter was entrusted to the present advocate. The cause thus as stated is that though the copy was received on 09.09.2022 but the delay occurred in filing R.P.No.1380 of 2022 and R.P.No.1417 of 2022, as the advocate to whom the matter was entrusted, misplaced the entire file in travelling. The entire blame is being put on the counsel. Such an averment for the cause in the application, is also vague and not specific. The petitioner, did not disclose the name of the counsel who allegedly misplaced the file in travelling. The date of travelling and the place of travelling has not been stated. Any written intimation by counsel to the petitioner regarding loss of file in transit or/and the further course of action to trace or search alleged missing of the files in transit or any public notice which ordinarily in case of missing or loss in transit of important documents is made, has also not been stated. The petitioner is not a layman. Further, as to when the case was entrusted to the present counsel is also not disclosed. Consequently, the plea appears to be an

afterthought, without there being any truth in the cause shown. The existence of the cause stated could not be established. In the absence of proof of existence of a stated cause it cannot be termed as a 'sufficient cause'.

37. Recently, in **Delhi Development Authority vs. Tejpal and others**[3]**,** the Hon'ble Apex Court on the point of law of condonation of delay held as under in paras 22 to 29:

> "22. Since the issue in this batch of appeals concerns the condonation of delay, it would be worthwhile to briefly allude to the law of limitation. The Limitation Act, 1963 ("the Limitation Act") is a statute of repose founded on considerations of public policy and expediency. The dominant objective underlying the law of limitation is that the title to property, and matters of rights in general, cannot be kept in a state of constant uncertainty, doubt or suspense. Public interest requires that finality should be put to litigation. The Limitation Act, thus, prescribes the specific points of time from which the period of limitation begins to run for the institution of actions. On expiry of such period, no action can be initiated save and except where the court condones the delay for a sufficient cause. A party who is insensible to the value of civil remedies, and who does not assert his claim with promptitude is denied the ability to enforce

[3] (2024) 7 SCC 433

even an otherwise rightful claim. This position is reflected in the Latin maxim, vigilantibus et non dormientibus jura subveniunt i.e. the law aids the vigilant and not those who sleep on their rights.

23. The Bombay High Court in Kumudini Ramdas Shah v. K.M. Mody (Kumudini Ramdas Shah v. K.M. Mody, 1984 SCC OnLine Bom 302: ALB 1985 Bom 320), aptly exposited the philosophical pillars supporting the concept of limitation: (i) the sword of prosecution ought not to be hanging over an individual for an indeterminate period; (ii) those who have been lethargic in safeguarding their interests should not expect the law to come to their rescue; and (iii) a defendant ought not to suffer for lost evidence owing to the passage of time.

24. Section 3 of the Limitation Act reflects this philosophy. Every suit or appeal made after the period of limitation ought to be dismissed, notwithstanding whether such ground had been raised by the opposite side. However, this does not imply that the Limitation Act destroys the right itself. Instead, it only extinguishes the ability to enforce the right, without either creating or destroying the underlying cause of action or entitlement itself.

25. As is clear from a plain reading of Section 5 of the Limitation Act, there are exceptions to this general rule. The statute allows for admitting an action provided "sufficient cause" is shown. This vests courts with the discretion to extend the period of limitation if the

applicant can show that he had sufficient cause for not preferring an appeal or application within the prescribed period. Section 5 requires analysis of two ingredients: first, an examination of whether "sufficient cause" has been made out; and second, whether such cause has been shown for not filing the appeal/application "within the prescribed period".

26. As regards the first ingredient, the Limitation Act itself does not provide more guidance on what its constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.

27. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant (Basawaraj v. LAO, (2013) 14 SCC 81). Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor. (Perumon Bhagvathy Devaswom v. Bhargavi Amma, (2008) 8 SCC 321)

28. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritised over technicalities (Raheem Shah v. Govind Singh, (2023) 18 SCC 764: 2023 SCC OnLine SC 910), as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary despite it appearing liberal or magnanimous. The expression "sufficient cause" should be given liberal construction so as to advance substantial justice (Lonand Grampanchayat v. Ramgiri Gosavi, 1967 SCC OnLine SC 105)

29. In addition to "sufficient cause", Section 5 also requires that such cause must be shown within the prescribed period. To satisfy the latter condition, the applicant must show sufficient cause for not filing the appeal/application on the last day of the prescribed period and explain the delay made thereafter (Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39). Causes arising after the culmination of the limitation period, despite being sufficient in substance, would not suffice for condonation given this second prong of Section 5 of the Limitation Act. However, the applicant shall not be required to prove each day's delay till the date of filing such appeal/application (Ummer v. Pottengal Subida, (2018) 15 SCC 127).

38. In **Delhi Development Authority** (supra), the Hon'ble Apex Court held that public interest requires that finality should be put to litigation. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. Sufficient cause vests the courts with the discretion to extend the period of limitation if the applicant can show that he had sufficient cause for not preferring an appeal or application within the prescribed period. It requires analysis of two ingredients: first, an examination of whether "sufficient cause" has been made out: and second, whether such cause has been shown for not filing the appeal/application "within the prescribed period".

39. This Court finds that the cause as stated is itself not established. There were no complete particulars nor any material filed to inspire confidence about the correctness or genuineness of the cause stated. So, any cause, much less sufficient cause could be established. The applicant must first establish the incidents, i.e the cause said to have

caused the delay. Once it is established to exist then it must also be shown as 'sufficient' and within the last day of the period of limitation, because of which the appeal or application could not be filed in time. If the cause itself is not established, or established but not sufficient, there would be no sufficient cause to condone the delay.

40. In **Rajneesh Kumar v. Ved Prakash (2024 SCC Online SC 3380)**, with respect to putting blame on the counsel for seeking condonation of delay, i.e mistake of counsel, the Hon'ble Apex Court observed in Paras 10 to 11 as under:

> "10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. **We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court.** Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. **The litigant, therefore, should**

not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

11. In the aforesaid context, we may refer to a decision of this Court in the case of Salil Dutta v. T.M. & M.C. Private Ltd., (1993) 2 SCC 185, wherein this Court observed as under:

"8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the **client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized.** Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788: AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. **The defendant is also**

> **not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies.** It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff). May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they S.L.P. (CIVIL) NOS. 935-936 OF 2021 6 were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted."

41. So, it is to be established first that there was mistake of the counsel and then that, such mistake furnished sufficient cause to condone delay. There is no general proposition that mistake of counsel by itself is always a sufficient cause to condone the delay. A litigant should not be permitted to throw the entire blame on the head of the advocate.

42. **In M/s. Singal Udyog vs. National Insurance Company Limited and others**[4] upon which the learned counsel for the petitioner placed reliance, the appeal was filed with a delay of 150 days. That was not condoned and the appeal was dismissed. The National Commission had further observed that there was apparent lack of merit and finally passed the order on the grounds of both, an inordinate delay of 150 days and on an apparent lack of merit. The Hon'ble Apex Court observed that once the Tribunal came to the conclusion that the matter was barred by limitation, it could not be dealt with on the merits of the matter. It was further observed that the delay of 150 days 'in the circumstances of that case' was not so alarming that the matter should have been rejected on the ground of delay.

43. In **Manager, Indusind Bank Limited** (supra) upon which the learned counsel for the petitioner placed reliance, the Hon'ble Apex Court has held that the question of limitation is not to be examined with a view to decline the condonation but to do substantial justice. That is well settled

[4] (2020) 19 SCC 154

legal position. But, the petitioner seeking condonation of delay has to establish the existence of the cause stated and its sufficiency, within the period of limitation so as to seek condonation of the delay.

44. The National Commission has recorded that the cause shown was not sufficient. This court also on above consideration finds that the cause could not be established. So, there was no sufficient cause to condone the delay. The finding recorded by the National Commission is justified. In the exercise of the jurisdiction under Article 227 of the Constitution of India, this Court does not find any justifiable ground to interfere with such finding of fact.

45. There is no dispute raised on the point of maintainability of the present petition under Article 227 of the Constitution of India against the order of the National Commission passed under Section 58(1)(b) as the said order is not appealable under the C.P.Act, 2019 and the National Commission is a Tribunal in view of **Ibrat Faizan vs. Omaxe**

Buildhome Private Limited[5] and **Universal Sompo General Insurance Co. Ltd vs. Suresh Chand Jain and another**[6] but while exercising the power under Article 227 of the Constitution of India, the High Court has to act within the parameters to exercise that power which is limited jurisdiction of superintendence.

46. In the exercise of powers under Article 227 of the Constitution of India, this Court does not find it a fit case for interference with the order of the National Commission.

47. The C.R.P lacks merit and is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Dated:02.05.2025
Note:
L.R copy to be marked.
B/o.
Gk

[5] 2022 SCCC OnLine SC 620
[6] (2024) 9 SCC 148

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

C.R.P.No.2994 OF 2024

Date:02.05.2025.

Gk.