

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-1086-2025 (O&M)
Reserved on: 02.04.2025
Pronounced on: 09.04.2025

MGF DEVELOPMENTS LTD.

. . . . Appellant

Vs.**COSMO PROPBUILD PVT. LTD. AND OTHERS**

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Sanjeev Sharma, Sr. Advocate, with
Mr. Amandeep S. Talwar and
Mr. Amit Jain, Sr. Advocate, with
Mr. Aryaman Thakur, Advocate, for the appellant.

Mr. Ashish Chopra, Sr. Advocate, with
Ms. Rupa Pathania, Advocate, for respondent No.1-Caveator.

Mr. Vijay Jindal, Sr. Advocate, with
Mr. Akshay Jindal and Mr. Abhishek Shukla, Advocates,
for respondent No.6.

DEEPAK GUPTA, J.

In Civil Suit bearing CIS No.-CS-2886 of 2022 titled "*MGF Developments Limited Vs. Cosmo Propbuild Pvt. Ltd. and others*", an application under Order VII Rule 11 of the CPC for rejection of the plaint was moved by defendants No.1 to 6 (*respondents N: 1 to 5 herein*), which was allowed by learned Civil Judge (Sr. Division), Gurugram vide order dated 27.05.2024, thus rejecting the plaint. This order was assailed by plaintiff (*appellant herein*) of the case by filing Civil Appeal bearing CIS No.CA/435/2024 before the District Court, Gurugram. Along with the appeal, an application to condone the delay of 38 days in filing the appeal under Section 5 of the Limitation Act was moved. The Court of Id. Additional District Judge, Gurugram vide impugned order dated 13.01.2025, dismissed the application for condoning the delay and consequent thereto, the appeal itself was dismissed being time barred.

2. The aforesaid order dated 13.01.2025 of the Appellate Court has been challenged by the plaintiff before this Court by way of present Regular Second Appeal with the prayer to set aside the same by condoning the delay in filing the appeal before the First Appellate Court and to remand the matter for adjudication by the First Appellate Court on merits. In the alternative, prayer is made to set aside not only the order dated 13.01.2025 of the First Appellate Court, but also to set aside the order dated 27.05.2024 of the trial Court and to restore the suit of the plaintiff to be adjudicated on merits.

3. To avoid confusion, parties shall be referred as per their status before the trial Court.

4.1 As the perusal of paperbook reveals, Emmar MGF Land Limited (later known as 'Emmar India Limited') was the holding company of the subsidiary group of companies namely, (i) M/s Sparsh Promoters Pvt. Ltd., (ii) M/s Sandesh Buildcon Pvt. Ltd. and (iii) M/s Sidhant Building Pvt. Ltd. By way of an order dated 08.01.2018, corrected on 16.07.2018 (*Annexure A8*) passed by National Company Law Tribunal, Principal Bench, New Delhi, Emmar MGF Land Limited merged with resulting company namely MGF Developers Ltd. i.e. the plaintiff of the present case. As per scheme of arrangement approved by NCLT, the demerged company transferred its vested rights in favour of the plaintiff company including development rights in various properties including the suit property.

4.2 On the other hand, defendant No.6 (*respondent N: 6 herein*) M3M India Limited is the holding company, its subsidiary group of companies being (i) Cosmo Propbuild Pvt. Ltd., (ii) Surya Propbuild Pvt. Ltd., (iii) Star City Realteck Pvt. Ltd., (iv) Neer Builders Pvt. Ltd. and, (v) Vibrant Infrateck Pvt. Ltd. - defendants No.1 to 5 of this case (*respondents N: 1 to 5 herein*).

5. Subject matter of suit is 31.12 acres of land, situated in village Chauma, District Gurugram, detailed in para N: 13 of the plaint (*Annexure*

A1), which was originally owned by three subsidiary companies i.e. M/s Sparsh Promoters Pvt. Ltd., (ii) M/s Sandesh Buildcon Pvt. Ltd. and (iii) M/s Sidhant Building Pvt. Ltd of Emmar MGF Land Limited (later known as Emmar India Limited). On the other hand, as per plaintiff, defendants N: 1 to 5 being holding subsidiary companies of defendant N: 6 - M3M were owners of 15.12.acres of land situated in village Mohammadpur Gujjar, Tehsil Sohna, District Gurgaon. Defendant N: 6 – M3M wanted to acquire the suit land. After negotiations between plaintiff & defendants N: 1 to 6, aforesaid lands were agreed to be exchanged and defendants N: 1 to 6 agreed to pay ₹ 114 Crore to the plaintiff by way of post-dated cheques. However, exchange of possession was to take place after clearance of the post-dated cheques.

6.1 However, disputes arose, when defendants No.1 to 6 started misrepresenting that they had already acquired 31.12 acres of land owned by the plaintiff and had the right to transfer therein. Suit land then became subject matter of litigation in Civil Suit bearing CS N: 2536-2016 titled “M/s Sparsh Promoters Pvt. Ltd & others vs. Cosmo Propbuild Pvt. Ltd & Others” i.e., between three subsidiary companies of Emmar group and the five subsidiaries companies of M3M Group i.e. defendants No.1 to 5 herein.

6.2 During the period, when scheme of demerger between Emmar and MGF was pending before the NCLT i.e. during 30.09.2015 to 16.07.2018, the abovesaid suit between subsidiary companies of Emmar and subsidiary companies of M3M resulted into a compromise. In terms of compromise dated 23.11.2016 Ex.C1 (*Annexure A4 herein*), an award dated 09.12.2016 was passed by the Court in the Daily Lok Adalat. As per the settlement, five separate exchange deeds [*Annexure A5 (colly) herein*], were executed and got registered. In four out of the five exchange deeds, post dated cheques were given, whereas qua the 5th exchange deed, the consideration amount was paid. As per the settlement, till the post-dated cheques are cleared, the possession cannot be exchanged.

7.1 Plaintiff claimed in the present suit that out of ₹114 Crore payable to it as per settlement, only an amount of ₹16,30,03,539/- was paid and that rest of the amount was paid through post dated cheques. As per the condition precedent in the settlement, in case even one of cheques is dishonoured, the compromise will stand terminated. It is the allegation of the plaintiff that before the exchange was finalised on the basis of compromise, defendants No.1 to 5 got mutation of suit land sanctioned in their favour. It is also the stand of the plaintiff that cheques were not cleared and so, the amount of ₹16.3 crores approximately paid earlier was forfeited. As per plaintiff, on finalization of the demerger scheme by NCLT, all rights in the suit land vested in the plaintiff w.e.f. 30.09.2015.

7.2 It is further the allegation of the plaintiff that despite cancellation of the exchange on account of non-honoring of the cheques, defendants No.1 to 5 in July 2021 in collusion with defendant No.7 applied for grant of license to defendant N: 8 – Director, Town and Country Planning, Haryana (*respondent N: 8 herein*) for setting up a residential project on the land, which included the part of the suit land. Objections were filed.

7.3 Besides, plaintiff filed CWP No.25534-2021 for quashing of the award dated 09.12.2016 passed by the Daily Lok Adalat in the Civil Suit bearing CS N: 2536-2016. As per plaintiff, though the writ petition as referred above, was disposed of vide order dated 19.04.2022 (*Annexure A9*), but liberty was granted to the plaintiff to avail legal remedies including filing of the present suit.

7.4 As defendants further tried to take forcible possession of the suit land, FIR dated 17.03.2022, was also lodged against defts No.1 to 7.

7.5 With the aforesaid allegations, suit was filed claiming injunction regarding possession against defendants No.1 to 7; not to create any third-party rights and also against defendants No.8 to 11 not to grant license etc.

Decree for declaration qua the award, exchange deed etc. to be declared as null and void were also sought.

8. Besides filing the present suit, plaintiff had also moved an application bearing CM-600 of 2022 in Civil Suit N: CS-2536 of 2016 under Order XXIII Rule 3 CPC so as to challenge the award dated 09.12.2016. However, that application was dismissed by the Court on 22.12.2022 (*Annexure A13*), which resulted in filing of the two Civil Revisions bearing CR No. 33-2023 and CR No. 858-2023 by both the sides. Both the civil revisions were disposed of by this High Court vide order dated 13.07.2023 (*Annexure A14*), by holding that the application under Order XXIII Rule 3 CPC was not maintainable and that remedy of the plaintiff herein was in the pending suit i.e. CS No. 2886-2022 i.e. present suit. Besides, the action taken by the Civil Court under Order XXIII Rule 3 including acceptance of money from the defendants was set aside by holding that the Court cannot come to the rescue of the defendants herein to condone their default under the award and the compromise. It was further held that these issues regarding non-compliance of the terms of the compromise and the award are to be adjudicated. All issues were left open for adjudication in the present suit.

9. In the present suit N: 2886-2022, defendants N: 1 to 6 moved an application under Order VII Rule 11 CPC for rejection of the plaint on various grounds, inter alia pleading that separate suit for enforcement of compromise decree/ award was not maintainable; that suit was barred by limitation; that writ petition for same relief had already been dismissed by the High Court; and that ad-valorem court fee was not paid. Said application was allowed by the trial Court on 27.05.2024 and thus, rejecting the plaint. Appeal against this order dated 27.05.2024, whereby the plaint was rejected under Order VII Rule 11 CPC, was dismissed by the First Appellate Court on the ground of delay, vide impugned order dated 13.01.2025.

10.1 Challenging the impugned order, learned Senior Counsel for the appellant submits that the trial Court prematurely adjudicated several factual issues, which ought to have been decided post framing of issues and

after the parties had led evidence during trial. It is further contended that the trial Court wrongly relied upon an earlier order passed under Order XXIII Rule 3 CPC to conclude that the present suit was barred by the principle of res judicata. Ld. Sr. Counsel emphasizes that the trial Court failed to consider that the said directions had already been set aside by this High Court in CR No. 33-2023 and CR No. 858-2023, vide judgment dated 13.07.2023, which was subsequently upheld by the Hon'ble Supreme Court on 06.02.2024. The Apex Court had categorically directed the trial Court to proceed independently, uninfluenced by observations made in previous proceedings.

10.2 Learned Senior Counsel further submits that the appeal against the trial Court's judgment dated 27.05.2024—whereby the plaint was rejected under Order VII Rule 11 CPC—was dismissed by the First Appellate Court solely on the ground of delay, without examining the merits, vide impugned order dated 13.01.2025.

10.3 It is submitted that after receiving the certified copy of the trial Court judgment on 29.05.2024, the Courts closed for summer vacation on 31.05.2024. During this period, the counsel for the appellant was unavailable. Subsequently, the appellant's authorized signatory fell ill. Upon his recovery, necessary steps were taken, and the appeal was ultimately filed on 07.08.2024. The delay of 38 days, therefore, was neither intentional nor unreasonable, having been caused by circumstances beyond the appellant's control.

10.4 Ld. Senior Counsel argues that the Appellate Court erred in dismissing the delay condonation application without appreciating the sufficiency of the cause and failed to consider the legal principles laid down by the Hon'ble Supreme Court in ***Raheem Shah & Anr. v. Govind Singh & Ors., 2023 SCC OnLine SC 910***, and ***Arunoday Singh v. Lee Anne Elton, SLP (C) No. 10751 of 2021, decided on 23.07.2021***.

10.5 It is contended that as per settled law, procedural delay should not defeat a meritorious case, especially when the delay is neither

substantial nor deliberate. Ld. Sr. Counsel emphasizes that when there is a conflict between technicalities and the cause of substantial justice, the latter must prevail. The appellant derived no advantage from the delay and has been persistently pursuing its legal remedies. Dismissing the appeal on a mere technicality leaves the appellant remediless, as it deprives it of the opportunity to seek adjudication on merits, which could result in the loss of significant rights over 31.12 acres of valuable land in village Chauma.

10.6 With these submissions, prayer is made for acceptance of the of the appeal by setting aside the impugned order.

11.1 Refuting all the aforesaid contentions, it is argued with vehemence by Id. Senior Advocate for the contesting respondents/defendants that the party, who approaches the Court must come to the Court with clean hands. Ld. counsel has referred to ***S.P Chengalvaraya Naidu Vs. Jagannath, (1994) 1 SCC 1***

11.2 It is further argued that though the expression 'sufficient cause' appearing in Section 5 of the Limitation Act, should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned. For this, Id. counsel has relied upon ***Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer, 2013(14) SCC 81***. For the same reasoning, reliance is also placed on ***Mahanagar Telephone Nigam Limited Vs. State of Maharashtra, 2013 (9) SCC 92***.

11.3 Ld. Counsel further referred to ***Sheo Raj Singh (Deceased) Through LRs and others Vs. Union of India, (2023) 10 SCC 531***, wherein it was observed by a two Judges Bench of Hon'ble Apex Court as under: -

"30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a

discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned, whereas, in certain other cases, delay of long periods can be condoned, if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

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

33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation

would be the question. Law is fairly well-settled that “a court of appeal should not ordinarily interfere with the discretion exercised by the courts below”. If any authority is required, we can profitably refer to the decision in **Manjunath Anandappa v. Tammanasa (2003) 10 SCC 390**, which in turn relied on the decision of **Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha (1980) 2 SCC 593**, where it has been that:

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

34. XXXXXXXXXXXXXXXX

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

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

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

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

d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

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

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

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

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

35. According to Mr. Sharma, **University of Delhi (2020) 13 SCC (Civ) 537** is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi (supra), was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of non-availability of the Vice Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved."

11.4 Ld. Senior Advocate further places reliance upon **State of Madhya Pradesh Vs. Ramkumar Chaudhary, 2024 SCC Online SC 3612**, wherein delay of 5 years 10 months and 16 days with no satisfactory reason, was not condoned by holding that callous and lackadaisical attitude on the part of the officials functioning in the State machinery cannot be brushed aside.

11.5 Ld. Sr. Advocate then pointed out towards the observations made by the Appellate Court in the impugned order, as per which, the appellant had cited the reason of ill health of its authorised signatory namely Sunil Yadav for delay in filing of the appeal. However, the said

contention was found to be false. In this regard, Id. senior counsel has referred to para No.9 of the impugned order of the First Appellate Court, which reads as under: -

“9. Now, in view of the ratio of the abovesaid judgment, come to the fact of the present case. The appellant, has cited the reason of ill-health of AR of Company Sh. Sunil Yadav, for filing appeal after the expiry of limitation period as prescribed under Limitation Act. It is explained that he is only person in the company, who was conversant with the whole background of litigation and further also record was so voluminous to prepare appeal in such period. It is also explained during summer vacations the counsel for appellant was not available, so appeal could not be prepared within statutory period. Per contra, the respondent opposed that the appellant made false statement on oath regarding the illness of Sunil Yadav, AR of the company as the appellant had filed a civil suit titled MGF Vs. Ashok Singh on 01.07.2024 through the said AR Sunil Yadav and through same counsel, who is representing the appellant in the present appeal and has filed the present appeal. Also, the affidavit supporting the plaint in the said suit is attested on 01.07.2024. No re-joinder is filed by the appellant to the reply to the application to controvert this fact. Thus, it is not denied that the AR Sunil Yadav had filed another suit on behalf of the appellant on 01.07.2024 through same counsel. Also, during course of argument, the learned counsel for appellant did not dispute this fact. Hence, it falsify the stand of appellant that the delay occurred in filing the present appeal due to the ill health of Sunil Yadav and non-availability of his counsel. Further, on perusal of the medical certificate attached with this appeal, prima facie it is a medical prescription of dated 15.07.2024. As such, no medical certificate of dated 01.07.2024 or before it, has been brought on record to show that the during the period after getting the certified copy on 29.05.2024 of impugned order dated 27.05.2024 till the expiration of the stipulated period of filing the appeal i.e., on 01.07.2024, AR Sunil Yadav was not well. In other words, the ground for the delay i.e., medical ground of AR Sunil Yadav does not arise before expiry of the limitation period but after expiry of limitation of filing the appeal as per medical certificated dated 15.07.2024. So far the contention of the learned counsel that the record is

*voluminous so appeal could not be filed is no ground to condone the delay. Having voluminous record of a litigation does not an explanation to file the appeal after the expiry of limitation period. Thus, in the ratio of the judgment of the **Sheonarayan (Supra)** it is an excuse and not the explanation as per the requirement of Section 5 of Limitation Act. The appellants have not approached the court with clean hands but come forward with false pleas.”*

11.6 Ld. Senior counsel submits that in view of the factual matrix of the case and the legal position, the First Appellate Court did not commit any error in dismissing the application for condonation of delay.

11.7 Ld. Senior Advocate adds further that even the contention of Id. Sr. Advocate for the appellant to the effect that appellant has a meritorious case, is nowhere to stand because plaintiff-appellant was not a party to the *lis*, in which the impugned award dated 09.12.2016 was passed by Lok Adalat. Besides, the plaintiff already availed its remedy by filing a Civil Writ Peiton so as to challenge that award, but that petition was dismissed. Then Execution for implementation of the award was dismissed. Even the application under Order XXIII Rule 3 CPC for setting aside the award was dismissed by the trial Court and that order has been upheld by the High Court and further by the Supreme Court. Ld. counsel contends that in these circumstances, the plaintiff has no case on merits to be adjudicated upon and as such, the plaint was rightly rejected.

11.8 With these submissions, Id. senior advocate prayed for dismissal of the present appeal.

12. This Court has considered submissions of both the side and have appraised the record carefully.

13. Since by way of the impugned order dated 13.01.2025, the appeal against the order of the trial Court rejecting the plaint, has been dismissed only on the ground of limitation by dismissing the application for condonation of delay and not on the merits, therefore, this Court is not

inclined to touch the merits of the case, lest it may prejudice the rights of any of the parties. This court is required to see as whether the first Appellate Court was justified in rejecting the application to condone the delay of 38 days in filing the appeal and consequently, in dismissing the appeal on the ground of limitation itself.

14. Recently, a three Judges Bench of Hon'ble Apex Court in ***Delhi Development Authority Vs. Tejpal and others, (2024) 7 Supreme Court Cases 433*** briefly explained the legal position on the law of limitation. It will be apt to reproduce the relevant observations, which are as under:

“Law on condonation of delay

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 (“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 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, 1984 SCC OnLine Bom 302*** aptly expounded 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. Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor.

28. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritized over technicalities, 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.

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. 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.”

15. From the above legal position as explained by Hon’ble Supreme Court, it is clear that the Limitation Act, 1963 is a law based on public policy that aims to bring finality to legal disputes by setting time limits for initiating legal actions. Its purpose is to prevent uncertainty in matters of property and rights. Once the prescribed time period expires, legal action cannot be taken unless the delay is justified and condoned by the court. The Act emphasizes that the law supports those who act promptly to assert their rights and not those who are negligent or inactive. At the same time, Section 5 provides an exception by allowing courts to admit delayed appeals or applications, if “sufficient cause” is shown. This gives courts discretion, requiring them to assess two key elements: (1) whether a valid reason exists, and (2) whether it justifies missing the original deadline, though the Act doesn’t define “sufficient cause,” leaving it to courts to interpret based on the facts of each case. Over time, certain guiding principles have developed—courts must evaluate not just the duration but the explanation for the delay. Mere excuses aren’t enough, and delays caused by the

applicant are viewed critically. The courts are encouraged to take a justice-driven approach over rigid technicalities. While liberal interpretation is allowed to further substantial justice, the applicant must still show valid reasons for not filing on time and explain the delay that followed. Yet, courts do not require proof of delay for each individual day.

16. Further, in yet another case titled ***Raheem Shah and another Vs. Govind Singh and others, 2023 SCC OnLine SC 910***, Hon'ble Supreme Court held as under: -

“5. This Court in the case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107*** has held as hereunder:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

6. The above decision expressing the intention of justice oriented approach percolating down to all the courts was rendered nearly three decades ago but unfortunately the case on hand demonstrates the pervading insensitive approach, which apart from continuing the agony of the litigants concerned has also unnecessarily burdened the judicial hierarchy which after going through the entire process will have to set the clock back, at this distant point in time and prolong their agony. If only the court concerned had been sensitive to the justice oriented approach rather than the iron-cast technical approach, the litigation between the parties probably would have come to an end much earlier after decision on the merits of their rival contention.

7. If that be the position, the very manner in which the lower Appellate Court has dismissed the appeal on the ground of delay when the delay was not inordinate is not justified and the High Court was also not justified in dismissing the appeal only on the ground that there was no question of law.”

17.1 The aforesaid observation of Hon’ble Supreme Court emphasizes that Section 5 of the Limitation Act is intended to empower courts to serve justice by allowing delayed cases to be heard on their merits, provided there is “sufficient cause.” Courts are encouraged to interpret this term liberally to avoid injustice due to procedural delays. The Supreme Court has long advocated a justice-oriented, pragmatic approach over a rigid, technical one, noting that:

1. Litigants usually gain nothing from delay.
2. Dismissing cases solely due to delay may deny justice.
3. The rule requiring explanation for every day’s delay should be applied sensibly.
4. Substantial justice should prevail over technicalities.
5. Delay should not be presumed to be intentional or due to bad faith.
6. The judiciary earns respect by correcting injustice, not enforcing it through strict procedures.

17.2 Hon’ble Supreme Court lamented that despite the above guidance being given decades ago, the case reflected a continued rigid and insensitive approach by lower courts, leading to prolonged litigation and unnecessary burden on the judicial system. A more sensitive and justice-driven response could have resolved the dispute much earlier.

18. Adverting to the facts of the present case, the first Appellate Court rejected the application for condoning a 38-day delay in filing the appeal and consequently dismissed the appeal solely on the ground of limitation. The court noted that the authorized representative of the appellant-plaintiff company had claimed the delay was due to his illness

following the reopening of the court on July 1, 2024, and that the appeal was filed only after he resumed duty. However, this explanation was found to be untrue, as records showed that the same representative had filed another case in the Gurgaon Court on July 1, 2024 itself. The court concluded that he had not approached it with clean hands and had submitted a false affidavit. Nonetheless, the critical question remains—whether this alone should be sufficient to dismiss the appeal outright without considering it on its merits.

19. It is crucial to recognize that the misrepresentation before the Court was made by the authorized representative of the plaintiff company, not by any of the Director/Managing Director of the company itself as a litigant. While such conduct is certainly improper and should not be encouraged, the legal position regarding the interpretation of Section 5 of the Limitation Act, 1963 mandates a justice-oriented and pragmatic approach, rather than a rigid and overly technical one. Hon'ble Supreme Court has consistently held that the expression "sufficient cause" under Section 5 should be construed liberally to ensure that substantial justice is not sacrificed at the altar of procedural technicalities.

20. In the present case, the plaintiff company has significant interests at stake, involving approximately 31 acres of valuable land worth crores of rupees. The delay in filing the appeal was limited to 38 days—a period not so excessive as to be considered inordinate or irredeemable. In view of the judicially recognized principle that litigants do not ordinarily benefit from delays and that justice must not be denied solely on technical grounds, the delay could have reasonably been condoned, particularly by imposing appropriate costs on the appellant as a measure to compensate the opposing party.

21. The outright dismissal of the appeal without adjudicating it on merits, especially in light of the substantial stakes involved, runs contrary to the spirit of Section 5 and the broader objective of the legal system to dispense substantive justice. Courts are expected to assess whether the

litigant, despite the conduct of its representative, deserves an opportunity to be heard, more so when the consequence of refusal may result in grave injustice and irreparable loss.

22. Having considered the overall facts and circumstances, this Court finds that the impugned order of the first Appellate Court, rejecting the application for condonation of a 38-day delay and consequently dismissing the appeal on the ground of limitation, is unsustainable and is therefore set aside.

23. This Court has deliberately refrained from expressing any opinion on the merits of the case to ensure that the first Appellate Court remains free from any influence when adjudicating the appeal against the trial court’s decision under Order VII Rule 11 CPC. Although both senior counsel, appearing for the appellant and the respondent, have vigorously advanced their respective positions regarding the strength of their cases, this Court believes that such contentions must be evaluated independently and objectively by the first Appellate Court at the time of deciding the appeal on merits.

24. Accordingly, the impugned order dismissing both the condonation application under Section 5 of the Limitation Act and the appeal is set aside, subject to the appellant-plaintiff paying ₹1,00,000/- as costs to the contesting respondents. The matter is remanded to the first Appellate Court for a fresh decision on the appeal, strictly on its merits and uninfluenced by any observations made herein. It is further directed that, pending the decision of the appeal before the first appellate court, no third-party rights shall be created in the suit property by either party. Present appeal is disposed of accordingly.

09.04.2025

Vivek/Nitika

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

Yes