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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA(OS) 12/2025**

LALIT KUMAR

.....Appellant

Through: Mr. Devashish Bharuka, Sr.
Adv. with Mr. Upamanyu
Sharma, Mr. Akshat Agarwal
and Mr. Parshat Singh, Advs.

versus

DINESH KUMAR & ORS.

.....Respondents

Through: Mr. Nakul Sehgal, Adv. for R-
1, 2 and 4.
Mr. Karan Luthra, Adv. for R-
5.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

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16.12.2025

CM APPL. 12300/2025 (Delay of 136 days in filing the Appeal)

1. By way of the present application filed under Section 5 read with Section 14 of the Limitation Act, 1963, the Applicant/Appellant seeks condonation of delay of 136 days in filing the present Appeal.

2. The Supreme Court in *Collector, Land Acquisition, Anantnag v. Katiji*¹, emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay. The Supreme Court observed that:

“3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within

¹ (1987) 2 SCC 107



such period.] 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. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-



making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

(Emphasis supplied)

3. For the sufficient reasons as stated in the application, the delay is condoned.

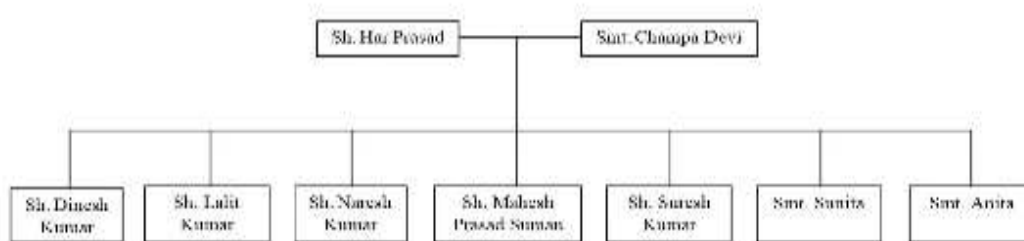
4. Accordingly, the present application stands disposed of.

RFA(OS) 12/2025 and CM APPL. 12301/2025 (Stay)

5. Defendant No.5 (Plaintiff in the suit case) assails the correctness of the preliminary decree for partition passed by the learned Single Judge on the ground that the Defendants had failed to file their written statements.

6. In order to comprehend the issues involved in the present case, relevant facts in brief are required to be taken into account.

7. The family tree of the parties is drawn as under:





8. It is evident that late Sh. Har Prasad and late Smt. Champa Devi had five sons and two daughters.

9. Ms. Sunita filed the suit in the year 2022 for various other reliefs including partition of the property. She asserted that though there is a registered Will allegedly executed by Sh. Har Prasad on 10.07.2018 bequeathing the property in favour of Sh. Lalit Kumar (Defendant No.5) (Appellant herein), however, the same is surrounded by suspicious circumstances. She also filed application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'].

10. Defendant No.5 (Appellant herein) entered appearance on 08.10.2022. He along with Defendant Nos. 1, 2 and 4 filed written statements contesting the suit. However, this written statement was filed in the nature and character of a 'Reply' to the application filed under Order XXXIX Rules 1 and 2 of the CPC. The same was not taken on record. Subsequently, the Defendant Nos. 1, 2 and 4 took somersault and changed their stand and started supporting the plaintiff. In the absence of a written statement from the Defendants, the learned Single Judge proceeded to pass a preliminary decree for partition.

11. Heard learned counsel representing the parties at length with their able assistance and also perused the paperbook.

12. It is evident that in this case, precedence is sought to be given to procedure over substantive justice, The Plaintiff, while filing the suit, admitted existence of the registered Will allegedly executed by Sh. Har Prasad in favour of Sh. Lalit Kumar (Appellant herein) though she claims that such Will is surrounded by suspicious circumstances.



13. Though, written statements by some of the Defendants including the Appellant were not taken on record, however, reply to the application was filed by Defendants contesting the application. The Plaintiff also filed replication to the aforesaid written statements. As is apparent how the Defendants seriously contested the claims in the suit, no categorical admission on part of the Defendants is made out that could enable the Court to decree the suit without giving the parties opportunity to lead their evidence.

14. It is not in dispute that Defendants No. 1, 2, 4 and 5 did file their reply in the nature and character of 'Reply' to the application within a period of 120 days from the date of service of notice. Since, it was a procedural defect, the Court could have rectified such an error by deeming it as Defendants' written statement on record.

15. In these circumstances, it was not a case where Defendants had not put forth any defense, in fact, the Plaintiff had herself disclosed about the existence of the Will.

16. Keeping in view the aforesaid facts, the present Appeal is allowed. The impugned judgment passed by the learned Single Judge on 27.08.2024 is set aside.

17. The written statement filed by the Defendant No.5 (Appellant herein), while filing reply to the application is taken on record, subject to cost of Rs. 20,000/- which shall be duly discharged as a donation for indigent patients to 'AIIMS POOR FUND' Account.

18. The learned Single Judge is requested to proceed with the case, the suit filed by the Plaintiff is restored to its original number. The parties through their counsel are directed to appear before the learned



Single Judge (Roster Bench) on 08.01.2026.

19. In view of the above, the present Appeal is disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 16, 2025/sp/kb