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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 53/2022**

RASHMI MADAN & ANR.Petitioners

Through: Mr. Sumit Kumar, Adv.
through V.C.

versus

KAMLESH SHARMA & ORS.Respondents
Through: Mr. Deepak Kumar Singh,
Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
13.02.2025

CM APPL. 19013/2022 (for condonation of delay of 475 days in filing the petition) & C.R.P. 53/2022

1. The present application is filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 475 days in filing the accompanying petition against the order dated 25.11.2019 (hereafter '**impugned order**'), passed by the learned Additional District Judge ('**ADJ**'), Tis Hazari Courts, Delhi in Civ DJ 740/2018.

2. The suit was filed by the respondents in the year 2018 against Defendant Nos. 1 and 2 (the husbands of the petitioners respectively) claiming that they had duped and played fraud with Mr. Ved Prakash Sharma (husband of Respondent No.1 and father of Respondent Nos. 2 and 3), since deceased, and snatched all his assets, including the suit property.

3. Thereafter, by the impugned order, the learned ADJ allowed the application filed by the respondents/ plaintiffs under

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Order XXXIII of the of the Code of Civil Procedure, 1908 ('CPC') seeking permission to file the suit without paying Court fees as indigent persons, by considering their bank statements, report from the concerned SDM as well as other material on record.

4. Subsequently, in January, 2021, the petitioners filed an application seeking impleadment under Order I Rule 10 of the CPC on the ground that they had purchased 1/5th share in the suit property from Mr. Ved Prakash on 29.10.2012 and they were in possession of 31.5 sq. yds. of the suit property at first floor. The said application was allowed by the learned ADJ by order dated 24.12.2021.

5. The learned counsel for the applicant submits that the delay in filing the present petition was inadvertent and *bona fide*.

6. He submits that even though the impugned order was passed way back in the year 2019, however, the petitioners found out about the same only after the petitioners applied for inspecting the file, pursuant to their impleadment application being allowed.

7. He submits that thereafter, the petitioners started looking for a counsel to file a revision petition as they knew the economic status and lifestyle of the respondents, however, the same took some time due to the Covid-19 Pandemic.

8. He submits that the learned ADJ erroneously allowed the application under Order XXXIII of the CPC without appreciating that Respondent No.1 is a retired government servant and earns a pension. He submits that the other respondents are gainfully employed and have a decent standard of living, whereby, they should not be permitted to proceed with the suit as indigent persons.



9. The learned counsel for the respondents submits that the petitioners are the wives of Defendant Nos. 1 and 2 respectively (that is, Petitioner No.1 is the wife of Defendant No. 2 and Petitioner No.2 is the wife of Defendant No. 1).

10. He submits that the husbands of the petitioners had entered appearance before the learned ADJ and contested the same. He submits that the husband of Petitioner No.1 had also filed his reply to the respondents' application under Order XXXIII of the CPC.

11. He submits that while it is contested that the petitioners were not aware of the impugned order till their impleadment application was allowed, however, the present petition is filed by the same counsel who represented the husband of Petitioner No.1 before the learned ADJ.

12. He submits that the application discloses no reason to condone the delay and the present petition has been filed solely to harass the plaintiffs and protract the proceedings.

13. I have heard the parties and perused the record.

14. In accordance with Section 5 of the Limitation Act, 1963, any appeal or application may be admitted beyond the prescribed period of limitation provided that there exists 'sufficient cause' that prevented the party from approaching the Court within the period of limitation.

15. In *Pathapati Subba Reddy v. LAO* : 2024 SCC OnLine SC 513, the Hon'ble Apex Court held that if applications for condoning inordinate delay are allowed, there would be no finality to the proceedings and litigations will be made immortal. The Hon'ble Court noted that the power to condone delay is discretionary in nature, and may not be exercised even in cases where sufficient cause is explained by the applicant and
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emphasised the need to draw an equilibrium between adopting a liberal approach and in implementing the statute of limitation, as it stands. The relevant portion of the judgement reads as under:

*“7.The law of limitation is founded on public policy. It is enshrined in the legal maxim “interest reipublicae ut sit finis litium” i.e. it is for the general welfare that a period of limitation be put to litigation. **The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely.** Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.*

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*12.In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act **but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the period prescribed.** In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish ‘sufficient cause’ for not filing it within time. **The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.***

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*16.**Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice... The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.**”*

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23. In *Basawaraj and Anr. vs. Special Land Acquisition Officer*, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. **It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.**

(emphasis supplied)

16. It is also relevant to note that the delay in the present case is of 475 days. The Hon'ble Apex Court, in a very recent case of ***H. Guruswamy v. A. Krishnaiah* : 2025 SCC OnLine SC 54**, has observed as under:

"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.

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

17. 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. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."



(emphasis supplied)

17. At the outset, this Court considers it apposite to reproduce the ground taken to justify the delay. The relevant portion of the condonation application is reproduced hereunder:

“3. That it is submitted that the present petition has been filed after a delay of days. The day to day particulars of the steps taken by the revisionist before filing the instant revision petition are enumerated as follows:-

25.11.2019 *The Impugned Order was passed by the Ld. Trial Court.*

January 2021 *That the Revisionist came to know about the filing of the present suit and thus preferred the application for Impleadment, which was allowed by the Ld. Trial court and then the revisionist inspected the file and came to know about the filing of the application by the plaintiffs of an application under Order XXXIII CPC to proceed the suit as pauper suit and which was allowed by the Ld. Trial court and the revisionist herein knowing the economic status and lifestyle and source of income of the respondents herein and the original plaintiff and thus was aggrieved by the order of the Ld. Trial court allowing the present suit to proceed as Pauper Suit.*

That thereafter the revisionist on being advised by her then counsel started looking for counsel before this Hon’ble court to file the present revision petition before this Hon’ble Court. The same took some time, due to Covid Pandemic being unable to physically meet the counsel and thus all this took a lot of time causing the present delay and finally they finalised the present counsel for filing the instant Revision Petition.

The present counsel took some time in obtaining the copy of entire judicial record of the matters and after obtaining the said documents realized that the file being voluminous and complicated required in-depth study before initiating the drafting of the same in order to ensure justice to the matter at hand and That all this took some time and therefore, this delay of 475 days in filing this petition.”

18. In the present case, it is not disputed that the husbands of the petitioners were aware of the filing of the suit and had contested the application filed by the respondents under Order XXXIII of the CPC. No averment has been made in the application to justify as to how the petitioners remained in



ignorance of the passing of the impugned order.

19. In such circumstances, it appears to be unlikely that the petitioners only found out about the filing of the suit in January, 2021, especially when their husbands had both entered appearance before the learned ADJ. It seems that the present petition is merely a ploy to protract the suit proceedings wherein the petitioners have sought to reagitate the grounds that had been raised by the husband of Petitioner No.1 in his reply to the application filed by the filed by the plaintiffs under Order XXXIII of the CPC. The said observation is further buttressed by the vagueness of the reasons given in the condonation application, where it has not been mentioned as to how or when exactly the petitioners came to know about filing of the suit.

20. The explanations rendered in the application do not constitute sufficient cause for condoning the delay of 475 days delay.

21. In view of the above, this Court finds no ground to condone the delay in filing the accompanying petition. The application is therefore dismissed.

22. Consequently, the petition is dismissed on the ground of being barred by limitation.

AMIT MAHAJAN, J

FEBRUARY 13, 2025