

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.84 of 2013

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1. Bhushan Prasad Gupta @ Bhushan Gupta, Son of Late Shivjatan Prasad Gupta, Resident of Village- Shahpur Police Station- Sonbarsa, District- Saharsa.
 2. Birendra Prasad Gupta, Son of Late Shivjatan Prasad Gupta, Resident of Village- Shahpur, Police Station- Sonbarsa, District- Saharsa.

... .. Petitioner/s

Versus

1. Shrimati Aruna Devi, Wife of Shri Uday Shankar Gupta, Resident of Village- Basmatiya, Police Station- Narpataganj, District- Arariya.
2. Smt. Gulab Devi, Wife of Shri Madhukar Gupta, Resident of Village- Pothiya, Police Station- Falka, District- Katihar.
3. Manisha Kumari, Daughter of Manoj Kumar Gupta Minor Daughter of Manoj Kumar Gupta through Father and Guardian Manoj Kumar Gupta, Son of Krishnavallabh Prasad Gupta, Resident of Village- Choutham, Pipra, P.S. Choutham, District- Khagariya.
4. Lalita Kumari Daughter of Manoj Kumar Gupta Minor Daughter of Manoj Kumar Gupta through Father and Guardian Manoj Kumar Gupta, Son of Krishnavallabh Prasad Gupta, Resident of Village- Choutham, Pipra, P.S. Choutham, District- Khagariya.
5. Manoj Kumar Gupta, Son of Krishnavallabh Prasad Gupta, Resident of Village- Choutham, Pipra, Police Station- Choutham, District- Khagariya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Durgesh Kumar, Advocate
For the Respondent/s	:	Mr. Amarnath Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

28 14-05-2026 Heard the learned counsel for the petitioners and
learned counsel for the Opposite Parties

2. The present Civil Revision Application has been preferred under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), by the petitioners, who seek to challenge the legality, propriety and correctness of the order dated 06.03.2013 passed by the learned District Judge,



Saharsa (hereinafter referred to as 'Trial Court') in Miscellaneous Case No. 19 of 2006, whereby the learned Trial Court declined to condone the delay under Section 5 of the Limitation Act (hereinafter referred to as 'Act') and consequently refused to restore Probate Case No. 04 of 2001, which had earlier been dismissed for default.

3. The facts of the case in brief is that the petitioners, who are sons of Late Shivjatan Prasad Gupta and residents of Village Basmatiya within Police Station Narpatganj in the District of Araria, had instituted Probate Case No. 04 of 2001 before the learned Trial Court for grant of probate in respect of a Will dated 07.09.2000 said to have been executed by Late Raghunath Prasad Gupta in their favour. It appears from the records that the said probate case, which was contested in its initial stage, ultimately came to be dismissed for default on 22.08.2002 due to non-appearance and lack of proper *pairvi* on behalf of the petitioners. Subsequently, after a considerable lapse of time, the petitioners filed an application under Order IX Rule 4 read with Section 151 of the CPC, which was registered as Miscellaneous Case No. 19 of 2006, seeking restoration of the probate case. Along with the said application, a petition under Section 5 of the Act was also filed praying for



condonation of delay in filing the restoration petition. The delay, which was of more than five years, was sought to be explained on the ground that petitioner no. 1, namely Bhushan Prasad Gupta, who was the elder brother and the person primarily conducting the case, had fallen seriously ill due to a heart ailment on 28.06.2002 and remained under medical treatment until 11.09.2006. In support of the said plea, the petitioners examined three prosecution witnesses which are; PW-1 (Bhushan Prasad Gupta), PW-2 (Birendra Prasad Gupta) and PW-3 (Umesh Prasad Gupta). They also produced documentary evidence including

Exhibit-1: a certified copy of the order dated 22.08.2002,

Exhibit-2: an application dated 13.09.2006, and a medical certificate issued by Dr. Shashi Bhushan Kumar on 11.09.2006, which was marked for identification. The said medical certificate, which has been brought on record, purported to show that Bhushan Prasad Gupta was under treatment for heart disease during the aforesaid period.

4. The opposite parties appeared in the miscellaneous proceeding and contested the claim of the petitioners by filing a rejoinder, wherein it was specifically asserted that the delay in filing the restoration application was inordinate and that the explanation offered by the petitioners was neither satisfactory



nor supported by reliable evidence. It was contended that the medical certificate produced by the petitioners was vague and did not disclose details such as the nature of treatment, place of treatment or supporting medical records. It was further contended that petitioner no. 2 had not explained his inaction and that the petitioners had been grossly negligent in prosecuting the case.

5. The learned Trial Court after considering the oral and documentary evidence, recorded a finding that the petitioners had failed to establish sufficient cause for condonation of delay. The learned Trial Court observed that the petitioners had not produced any prescription, medical record or hospital document to substantiate continuous illness for such a prolonged period of more than five years. It was also observed that there was no explanation as to why petitioner no. 2 could not pursue the matter independently. On the basis of such findings, the learned Trial Court rejected the application under Section 5 of the Act and consequently dismissed the restoration application. The petitioners feeling aggrieved by the said order have invoked the revisional jurisdiction of this Hon'ble Court on the ground that the learned Trial Court has exercised its jurisdiction with material irregularity and has failed to adopt a



justice-oriented approach.

6. Learned counsel for the petitioners while assailing the impugned order submitted that the learned Trial Court has failed to exercise jurisdiction vested in it in accordance with settled legal principles governing condonation of delay. It is contended that the approach adopted by the learned Trial Court is overly technical and defeats the very object of Section 5 of the Act, which is intended to advance substantial justice. It is argued that the expression “sufficient cause” is required to be construed liberally and in a pragmatic manner, keeping in view the realities of life. Learned counsel for petitioners further submitted that the learned Trial Court has erred in applying a strict standard of proof, particularly in relation to the medical evidence and has ignored the consistent oral testimony adduced by the petitioners. It is also emphasized that the sufficiency of cause is to be judged on the touchstone of reasonableness and not on mathematical precision.

6.i. Learned counsel for the petitioners further submitted that the learned Trial Court has failed to appreciate that procedural law is designed to facilitate justice and not to obstruct it and reliance was placed on the well-established principle that courts should prefer adjudication on merits rather



than non-suiting a party on technical grounds and it is further stated the denial of restoration would result in denial of substantive rights. It is also contended on behalf of learned counsel for the petitioners that the learned Trial Court has misdirected itself in scrutinizing the explanation with undue suspicion instead of examining whether the explanation when taken as a whole, constitutes a *bonafide* and reasonable cause. Learned counsel for the petitioners also submitted that minor inconsistencies or absence of elaborate documentation cannot be a ground to reject an otherwise plausible explanation and it is further stated that the discretion vested in the Court under Section 5 of the Act must be exercised to promote justice and not in a manner which results in miscarriage of justice. Learned counsel for the petitioners also submitted that the impugned order reflects a rigid and pedantic approach which is contrary to the settled jurisprudence that courts should adopt a liberal stance where no malafide or deliberate negligence is attributable.

6.ii. Learned counsel for the petitioners also submitted that the refusal to condone delay has the effect of foreclosing the petitioners' right to have their claim adjudicated on merits, which is a serious consequence. It is further contended that the balance of convenience lies in favour of restoration as no



irreparable prejudice would be caused to the opposite parties, who would still have the opportunity to contest the matter. Lastly, it is submitted by Learned counsel for the petitioners that the impugned order is vitiated by material irregularity and improper exercise of jurisdiction, and is therefore liable to be set aside.

7. Learned counsel for the Opposite Parties submitted that the present revision petition is wholly devoid of merit and does not warrant interference within the limited scope of Section 115 of the CPC. At the outset, it was contended that the power to condone delay is discretionary in nature and the same has been exercised by the learned Trial Court upon due consideration of the material on record. It is further stated on behalf of Opposite Parties that unless such discretion is shown to have been exercised arbitrarily, capriciously or perversely, the revisional Court ought not to interfere. It is further contended by learned counsel on behalf of Opposite Parties that the concept of “sufficient cause” cannot be stretched to such an extent that it renders the law of limitation futile. The burden lies heavily on the applicant to furnish a cogent, credible and convincing explanation, particularly when the delay is substantial. Learned counsel for the opposite parties also submitted that vague,



general or unsubstantiated pleas do not satisfy the legal requirement and further emphasized that the law of limitation is founded on sound public policy and is not a mere technicality. Learned counsel also stated that entertaining stale claims would defeat this fundamental principle.

7.i. Learned counsel for the opposite parties further submits that the petitioners have failed to demonstrate due diligence and *bonafide* conduct, which are essential considerations for invoking the discretionary relief of condonation. It is contended that the explanation offered does not inspire confidence and falls short of the standard required under law. It is also contended that the learned Trial Court has rightly scrutinized the explanation and has recorded findings based on appreciation of evidence, which do not suffer from any jurisdictional error. It is further submitted on behalf of Opposite Parties that the revisional jurisdiction is not intended to re appreciate evidence or substitute the discretion of the learned Trial Court with that of the High Court. Learned counsel for the opposite parties also submitted that permitting restoration in such circumstances would unsettle the settled positions and cause serious prejudice, thereby undermining the certainty and stability of legal proceedings. Lastly, it was contended that on



behalf of Opposite Parties that the revision application be dismissed, as no case for interference has been made out.

8. The core issue that arises for determination in this revision is “*Whether the learned Trial Court committed jurisdictional error or material irregularity in refusing to condone the delay and dismissing the restoration application*”?

9. This Court has carefully considered the submissions and perused the entire record with due attention to the reasoning assigned by the learned Trial Court. At the outset, it is necessary to delineate the scope of interference under Section 115 of the CPC. The revisional jurisdiction is supervisory and not appellate in nature. Interference is warranted only where the subordinate court has either exercised a jurisdiction not vested in it, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, unless the impugned order discloses perversity, misapplication of legal principles, or manifest injustice, this Hon’ble Court would be slow in interfering with a discretionary order.

10. The controversy in the present case revolves around the refusal to condone delay under Section 5 of the Act. It is well settled that the expression “sufficient cause” is elastic



and must receive a liberal construction so as to advance substantial justice. However, such liberal approach is not unbridled. The applicant must demonstrate that the delay was occasioned despite acting with reasonable diligence and that there was no negligence, inaction or want of *bonafides*.

11. In the case of *Basawaraj and Anr. v. Special Land Acquisition Officer (2013) 14 SCC 81*, the Hon'ble Apex 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 Act cannot be liberally interpreted if negligence, inaction or lack of *bonafide* 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.

"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."*

"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 tantamounts to showing utter disregard to the legislature."



12. Also in the case of *Shivamma (Dead) by LRs v. Karnataka Housing Board & Ors. (Arising out of Special Leave Petition (C) No. 10704 of 2019*. The two-Judge Bench comprising *Hon'ble Justice J.B. Pardiwala and Hon'ble Justice R. Mahadevan* observed,

“... as is manifest from the entire discussion above, for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of “sufficient cause” for the entirety of the period from when the limitation began till the actual date of filing. In other words, if the period of limitation is 90-days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100-days.”

“As such, under Section 5 of the Limitation Act, for the purpose of seeking condonation of delay in filing of an appeal or application, as the case may be, beyond the stipulated period of limitation, the delay in the filing has to be explained by demonstrating the existence of a “sufficient cause” that resulted in such delay for both the prescribed period of limitation as-well as the period after the expiry of limitation, up to actual date of filing of such appeal or application, as the case may be, or to put it simply, explanation has to be given for the entire duration from the date when the clock of limitation began to tick, up until the date of actual filing, for seeking condonation of delay by recourse to Section 5 of the Limitation Act.”



13. Applying the aforesaid principles to the facts of the present case, it is evident that the delay in question is not marginal but extends to more than five years. Such an inordinate delay casts a heavier burden on the petitioners to furnish a cogent, consistent and credible explanation covering the entire period of delay. It is not sufficient to assign a general cause; the explanation must be such as would persuade the Court that the petitioners were prevented by circumstances beyond their control from taking timely steps.

14. The explanation offered is founded primarily on the alleged prolonged illness of petitioner no. 1. While illness can, in appropriate cases, constitute sufficient cause, the Court is required to assess whether the nature, duration and effect of such illness reasonably prevented the party from prosecuting the proceeding. In the present case, the material on record as appreciated by the learned Trial Court, does not satisfactorily establish continuous incapacity for the entire duration. The medical document relied upon is not corroborated by contemporaneous records which could indicate sustained treatment or inability to act. The evidentiary value of such a document in the absence of supporting material, was therefore rightly scrutinized.



15. Equally significant is the position of petitioner no. 2, who was admittedly a co-applicant in the original proceeding. The explanation does not adequately address why no steps were taken by him independently to pursue the matter. The obligation to prosecute a case cannot be said to rest exclusively upon one party when there are multiple interested litigants. The absence of any convincing reason for complete inaction on his part reinforces the inference of lack of due diligence. Another aspect which merits consideration is the conduct of the petitioners during the relevant period. There is no indication of any effort to ascertain the status of the proceeding for a prolonged duration, nor is there any material to suggest that they remained vigilant about their legal remedy. The principle “*vigilantibus non dormientibus jura subveniunt*” applies with full force, and the Court cannot overlook prolonged indifference under the guise of liberal interpretation.

16. This Court does not find that the Impugned order suffers from perversity or that irrelevant considerations have been taken into account. Nor does it appear that relevant factors have been ignored. It is also well settled that discretion exercised by a court in matters relating to condonation of delay should not be lightly interfered with unless it is shown that the



discretion has been exercised arbitrarily or on wholly untenable grounds. In the present case, the reasoning of the learned Trial Court reflects a conscious application of mind to the requirement of explaining the delay and cannot be said to be either arbitrary or capricious.

17. In view of the foregoing discussion, this Court is of the considered opinion that the petitioners have failed to establish sufficient cause for condonation of delay and that the learned Trial Court has not committed any jurisdictional error or material irregularity in passing the impugned order.

18. Accordingly, the Civil Revision No. 84 of 2013 is dismissed.

19. There shall be no order as to costs.

(Ramesh Chand Malviya, J)

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