2026:HHC:47305

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP(M) No. 295 of 2026

Decided on: 28.10.2026

National Highway Authority of India …. Applicant.

Versus

Gian Chand & anr. ...Respondents

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the applicant: Ms. Shreya Chauhan, Advocate.

For the respondents: Mr. Varun Rana, Advocate.

Romesh Verma, Judge (Oral)

The instant application under Section 5 of the Limitation Act has been filed for condoning the delay in filing the present appeal, which is barred by 4 years and 16 days.

2. The facts, as emerge in the present case, are that the land of the respondents was utilized for the construction of four-lane road in Ner Chowk, Manali Section of NH-21. The applicant-appellant initiated the acquisition proceedings under the National Highways Act, 1956, from KM 126.500 to KM 188.917, Bilaspur Ner Chowk Section for the land falling under revenue estate Gamohu, Tehsil Sundernagar,

District Mandi. The Competent Authority passed an award, bearing No.41, dated 17.10.2013 under Section 3-G of the National Highways Act, 1956 and determined the compensation to the tune of Rs.12,00,000/- per bigha, irrespective of classification of land. The compensation for the structure was also awarded as per the report of the registered Valuer duly verified by Executive Engineer, HPPWD.

3. Feeling dis-satisfied by the quantum of compensation, the respondents/non-applicants filed claim under Section 3-G (5) of the Act, 1956, before the learned Divisional Commissioner, Mandi, appointed by the Central Government. The learned Arbitrator partly allowed the claim of the claimants/respondents and enhanced the compensation amount of the land to the tune of Rs.26,32,602/- per bigha and also granted statutory benefits vide impugned award dated 26.07.2017, however, the claim of the respondents/landowners for enhancement of compensation for structure was rejected.

4. Feeling dis-satisfied with the award passed by the learned Arbitrator, the applicant-appellant preferred petition under Section 34 of the Arbitration and Conciliation Act before the learned District Judge, Mandi, however, the said petition came to be dismissed on 07.01.2022.

5. In the application which has been filed under Section 5 of the Limitation Act, it has been contended that the impugned judgment was passed by the learned District Judge on 07.01.2022.

The counsel for the applicant applied for the certified copy on 06.01.2026, and the same was delivered on 09.01.2026. It has been stated that the appeals pertaining to Mohal Gamohu were allotted/assigned to M/s Mittal and Mittal Advocates. Despite repeated requests, the then counsel for the applicant did not provide any update regarding the filing of the appeal or its status. Various requests were made to M/s Mittal and Mittal Advocates to send the filing receipts and the orders passed in the appeals. However, the same were never received. It has been further stated in the application that M/s Mittal and Mittal Advocates were directed to file the appeals; however, no order or update was given by the said law firm in any of the matters. The applicant finally withdrew the appeals from the said law firm vide letter dated 23.07.2025. Thereafter, the applicant again contacted its counsel to procure the complete case file and requested the counsel to provide the entire record along with the filing numbers. However, in December 2025, the said M/s Mittal and Mittal Advocates refused to hand over the record to the applicant.

6. It has been stated that after obtaining the entire record, legal opinion was sought so as to determine the future course of action. The legal opinion was given by the Regional Office, and the matter was discussed at various levels for the purpose of filing the appeal, where it was decided to challenge the judgment of the learned District Judge. In this process, a delay of 4 years and 16 days has

occurred in filing the appeal. It has been stated that the delay in filing the appeal is neither intentional nor wilful, but the same has occurred under unavoidable circumstances. Along with the application, the applicant has placed on record Annexure A-2, the copy of the communication addressed by the Project Director of the present applicant to M/s Mittal and Mittal Advocates, dated 23.09.2022, whereby the applicant had requested the said law firm to challenge the impugned order before this Court by filing the appeals under Section 37 of the Arbitration and Conciliation Act. Annexure A-3 is the copy of the communication addressed to the learned senior counsel of the present case dated 23.07.2025, whereby the cases were entrusted to him. Thereafter, Annexure A-4 (colly.) is the copies of the emails addressed by the counsel to the applicant for procuring the entire record, as they were not in possession of the complete set of files.

7. It has been contended by the learned counsel for the applicant that the delay in filing the appeal is on account of the fact that the law firm, namely M/s Mittal and Mittal Advocates, who were entrusted with the cases, neither filed the appeals in time nor communicated or responded to the communication addressed by the applicant. It is the contention of the learned counsel that the present applicant cannot be penalized for the negligence of the law firm. Therefore, though the delay is on the higher side, however, keeping in

view the attending facts and circumstances of the case, the same deserves to be condoned in the interest of justice.

8. On the other hand, the application has been vehemently opposed by Mr. Varun Rana, learned counsel for the non-applicants, on the ground that the delay in filing the present appeal is intentional, deliberate, and wilful. Since there is a huge delay of more than four years, therefore, in the absence of any plausible explanation, no relief can be granted to the present applicant. He further submits that on account of the inaction and negligence of the applicant, the valuable rights which have accrued to the non-applicants/respondents cannot be taken away lightly. He further submits that the respondents are poor villagers and their land was utilized by the NHAI for the construction of the road way back in the year 2012. He further submits that for more than last 13 years, the non-applicants are running after the present applicant for the payment of just and fair compensation. He further submits that in case the present application is allowed, a huge irreparable loss shall be caused to non-applicants, and they shall be dragged in another round of litigation.

9. I have heard the learned counsel for the parties and have gone through the case file carefully.

10. In the present case, the thrust of the applicant's argument is that the entire delay in filing the present appeal occurred on account of the fact that the case in hand was entrusted to M/s Mittal

and Mittal Advocates, vide its letter dated 23.09.2022. Though various averments have been made in the application explaining the reasons for not filing the present appeal, admittedly, from 23.09.2022 till 23.07.2025, no material or document has been placed on record to demonstrate what steps were taken by the applicant for filing the present appeal. Even otherwise, Annexure A-2, the letter which has been addressed by the Project Director of the NHAI to M/s Mittal and Mittal Advocates, reveals that the impugned judgment was passed on 07.01.2022. However, there is no explanation as to what steps were taken by the applicant from the said date, i.e., from 07.01.2022 to 23.09.2022. The said gap is missing, and no explanation has been offered by the present applicant. To the similar extent, after entrusting the cases to the learned senior counsel who is representing the applicant before this court since 23.07.2025, the applicant has not been able to establish and substantiate what steps were taken by them and what prevented them from filing the instant appeal from 23.07.2025 to 22.01.2026. The gap of nearly three years between 23.09.2022 and 23.07.2025 is missing and has not been explained, as a result of which a right has accrued to the respondents/non-applicants, which cannot be taken away on the basis of the bald assertions made in the application.

11. This court is conscious of the fact that the land of the respondents/non-applicants, who are villagers, was utilized for the

construction of the road way back in 2012, and despite passing of more than 13 years, they are running from pillar to post to get fair compensation. No plausible or cogent reasons have been assigned or have come forward to show what prevented the present applicant from filing the instant appeal within time. Though the applicant has tried to put the entire blame on M/s Mittal and Mittal Advocates, but when specifically asked by this Court what action has been taken against the law firm, the counsel for the applicant failed to answer.

12. 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 delay to enable the Courts to do substantial justice and to apply the law in a meaningful manner that sub-serves the ends of justice. Notwithstanding the above, no matter how liberal an approach is adopted in condoning delay, the existence of sufficient cause for not filing the appeal in time is a condition precedent for exercising the discretionary power to condone the delay. 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 reopened by taking aid of Section 5 of the Limitation Act. It must always be borne in mind, while construing sufficient cause in deciding applications under Section 5 of the Limitation Act, that on the expiry of the period of limitation

prescribed for filing an appeal, a substantive right accrues in favour of the decree-holder, and this right ought not to be lightly disturbed.

13. The Hon'ble Apex Court has repeatedly held that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as a matter of right, as excusing the delay is within the discretionary jurisdiction vested in the court. The Court, despite the establishment of sufficient cause, may for various reasons refuse to condone the delay, depending upon the bona fides of the party. The liberal approach in considering the sufficiency of cause for delay should not be allowed to override the substantive law of limitation. The concept of a ‘liberal approach’ cannot be employed to jettison the substantial law of limitation. It is a well-settled principle of law that though limitation may harshly affect a particular party, 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. Where a case has been presented in the court beyond limitation, the applicant has to explain to the court what the sufficient cause was which means an adequate and enough reason that prevented him from approaching the court within the period of limitation. No court would be justified in condoning such an inordinate delay by imposing any condition whatsoever, as in the present case where there is a delay of more than 4 years and 16 days

14. The Hon'ble Apex Court in case titled as ***Pathapati Subba Reddy (died) by LRs and others vs. The Special Deputy Collector (LA), Special Leave Petition (Civil) No.31248 of 2018***, has laid down the parameters for condonation of delay in the following manner:

> *"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.*

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

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21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors., where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.

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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.

> *24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands, Paragraph 12 reads as under:*
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> *"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. It is contended by the learned counsel for the applicant that, being an instrumentality of the State, a liberal approach should be adopted while condoning the delay in filing the application under Section 5 of the Limitation Act. She submits that since the file went through different channels and because it is an agency of the State, the Court should adopt a liberal approach while considering the said application.

16. To the said submission of learned counsel for the applicant, Mr. Varun Rana, learned counsel for the non-applicants, has placed on record the copy of the judgment as passed by the **Hon'ble Apex Court in Shivamma (dead) by LRs vs. Karnataka Housing Board & others, Civil Appeal No.11794 of 2025, decided on 12th September, 2025**, whereby Hon'ble Apex Court has held that irrespective of whether the litigant is a Government entity or a private person, the provisions of law applicable are the same, and as such same consideration that is shown by the courts to a private party, when claiming the protection of Section 5 of the Limitation Act, should also be adopted towards the State. The expression "sufficient cause" cannot be construed too liberally merely because the party is the Government, the courts are bound to accept readily whatever has been stated on behalf of the state.

17. The Hon'ble Apex Court has deprecated the condonation of delay in filing the appeal therein that was occasioned not by any unavoidable circumstance, but by the sheer inefficiency and ineptitude of the Government pleaders concerned, merely because the party seeking condonation happened to be the State. In doing so, the Hon'ble Apex Court had observed that the concepts such as liberal approach, justice-oriented approach, substantial justice cannot be employed to thwart the substantial law of limitation, particularly in cases where the court concludes that there is no justification for the

delay. The distinction between the State or any instrumentality, vis-a-vis the private individual for the purpose of Section 5 of The Limitation Act should be understood in its proper context and true spirit.

18. The Hon'ble Apex Court further observed that the State or any of its instrumentality cannot be put on the same footing as a private party for the purpose of condonation of delay under Section 5 of the Limitation Act. The Hon'ble Apex Court while passing the judgment has given a clear message to the State and all its instrumentalities that a leisurely and lethargic approach cannot continue for all times to come. The State and all public authorities to constitute legal cells to examine the cases whether any legal principles are involved in the decisions by the courts. If not, then endeavour should be made towards arriving at a settlement, instead rather than re-agitating the related causes before the courts. Differential treatment cannot continue for all times to come.

19. The Hon'ble Apex Court after setting aside the judgment passed by the High Court, whereby the delay was condoned, dismissed the application for condonation of delay by imposing cost of Rs.25,000/- on the respondent in the said case. It has been held by the Hon'ble Apex Court that limitation periods are prescribed to maintain a sweeping scope for the *lis* to attain for finality. More than the importance of the judicial time, what worries is the plight of the litigant with limited means, who is to contest against an enormous State, and

its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold because, say if a party litigating against the State for whatever reason is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the *lis* for another round of litigation and leaves such litigant listless.

20. The said exposition of law has been reiterated in various judgments by the Hon'ble Supreme Court.

21. In the present case, the applicant-NHAI has filed the application to make out a case for the condonation of delay. The entire burden has been shifted on M/s Mittal & Mittal, Advocates, and it has been averred that on account of their negligence, the present appeal could not be filed. Interestingly, the applicant has failed to establish or demonstrate from the record what steps were taken by the applicant from the date the impugned judgment was passed by the learned District Judge, Mandi. Not even a single communication has been placed on record to show that any correspondence was made by the applicant to the said legal firm prior to 23.09.2022. Even thereafter, for three years, no steps were taken by the present applicant to inquire about the pendency or status of the case. From 23.09.2022 till 23.07.2025, no explanation has come forward on behalf of the applicant to show and establish that the applicant was prompt in dealing with the present case and that there was no negligence on the part of the applicant in filing the present appeal.

22. Though, in substance, it has been contended by the learned counsel for the applicant that the applicant was not aware of the filing of the appeal, if any, by M/s Mittal & Mittal, Advocates, and that they were under the impression that the appeals stood filed by the said law firm, there is no explanation on behalf of the applicant as to what steps were taken by them except for the letter (Annexure A-2) to inquire about the pendency/status of the cases.

23. The learned counsel for the non-applicants filed reply in connected case bearing OMP(M) No.250 of 2026, titled as NHAI vs. Sunder and has adopted the same in the present case being similar in nature, whereby it has been stated that the averments and contents of the application are false, incorrect, and mischievous. When the non-applicants filed the execution petition, the counsel for the present applicant put in an appearance before the learned executing court and also deposited the entire awarded amount, based upon which the execution petition was ordered to be dismissed as withdrawn. The said fact has been stated by the non-applicants, which also falsifies the case of the present applicant. Once the learned counsel for the applicant/JD put in an appearance in the execution proceedings and subsequently accepted the same by depositing the awarded amount, the allegations and averments made in the application do not hold good and are found to be false and incorrect.

24. The stand as has been adopted by the learned counsel for the applicant that on account of the fault of the legal firm, the delay of 4 years 16 days has occurred in filing the present appeal, the Hon'ble Apex Court in ***Rajneesh Kumar & Anr. vs. Ved Prakash, SLP(Civil) Nos.935-936 of 2021***, has held that as noticed over a period of time that a tendency on the part of litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court is coming forward. It has been observed that even if, it is assumed that the concerned lawyer was careless or negligent, this by itself cannot be a ground to condone the 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 disowns him at any time and seek relief.

25. It is well settled that Advocate is the agent of the party. His acts and statements, made within the limits of the authority given to him, are the acts and statements of the principal, i.e. the party who engages 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 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 Hon'ble Apex Court in the said judgment has held as follows:

> *"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.*
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> *S.L.P. (CIVIL) NOS. 935-936 OF 2021*
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> *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. reported in (1993) 2 SCC 185, wherein this Court observed as under:-*
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> *"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 [AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an ongoing 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 noncooperate 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 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." (Emphasis supplied)

12. As regards the law of limitation, we may refer to the decision of this Court in Bharat Barrel & Drum MFG Go. v. The Employees State Insurance Corporation, (1971) 2 SCC 860, wherein this Court held as under:-

"The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, jura sub- veniunt (the laws give help to those who

are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims." (Emphasis supplied)"

26. To the similar effect is the judgment of the Hon'ble Apex Court in ***Sanjay Singh and another vs. Central Himalayan Land Development Company Ltd., (2019) 12 SCC, 218***, wherein the parameters for condonation of delay have been laid down in the following manner.

> *"15. But, what is more striking is that the delay to the tune of 721 days was condoned by the High Court when there was no satisfactory explanation. In CIVIL APPEAL NO. 1928 OF 2019 (@ SLP(C) No.24690 OF 2018) SANJAY SINGH AND ANR. VS. CENTRAL HIMALAYAN LAND DEVELOPMENT CO. LTD. our view, there was gross negligence on part of the respondent and the explanation offered in support of the prayer for condonation does not appear to be correct. This is evident from the fact that no effective steps were taken to pursue the complaint which was lodged against the then advocate. In the petition for special leave, it was asserted that the complaint against the Advocate was not being proceeded with and the respondent had remained absent on the relevant date. Said assertion was not answered satisfactorily in the affidavit in reply filed in this Court. Taking totality of the circumstances, in our view the delay ought not to have been condoned by the High Court. We, therefore, accept the submission of the appellants and set aside the order*

condoning delay. Consequently, the First Appeal also stands dismissed."

27. This court is of the considered view that poor villagers, whose land was utilized for the construction of the road, have been deprived of their property and are running from pillar to post for the last 13 years. In case the present application is allowed, the non-applicants will be thrown into another round of litigation for years to come. As rightly pointed out by the learned counsel for the non-applicants that since the delay is inordinate and unexplained and is more than 4 years 16 days, it cannot be condoned in any eventuality. The applicant has failed to make out a case for the condonation of delay as no sufficient reasons have been assigned in the application.

28. Consequently, in view of the observations made hereinabove, the present application, being devoid of any merit, deserves to be dismissed, so also the accompanying appeal. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

28th October, 2026
(pankaj)