BENCH NO. 1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW

Appeal No. D-64/2023

Uttar Pradesh Awas Evam Vikas Parishad. .....Applicant/Appellant

Versus

Bhupendra Prasad Singh. ……………………….Respondent.

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman
Hon'ble Mr. Sanjai Khare, Judicial Member

1. Heard Sri Anurag Singh, learned counsel for the applicant and Sri Ankit Tripathi, learned counsel for the respondent on the application for condonation of delay.

2. Learned counsel for the applicant submitted that the impugned order dated 18.08.2021 of the Regulatory Authority was uploaded on the portal of UP RERA and communicated to the parties on 02.09.2021. The limitation for filing the appeal of the same was upto 02.11.2021 but the instant case has been filed on 24.01.2023 with a delay of 448 days. Certified copy of the order was applied on 19.01.2023 and the same was received on the same day i.e. 19.01.2023.

3. Learned counsel for the applicant placed reliance on Hon'ble Supreme Court order dated 23.09.2021, passed in **Suo Moto Writ (Civil) Petition No. 3/2020** titled as In Re : "Cognizance for Extension of Limitation" whereby the period of limitation was extended from 15.03.2020 till 02.10.2021.

4. Learned counsel for the applicant further submitted that the benefit of the aforesaid judgment and order of the Hon'ble Supreme Court is applicable in the instant case also.

5. Further submission of learned counsel for the applicant is that the 90 days' limitation period, after taking the benefit of the said order of

Hon'ble Supreme Court, expired on 28.05.2022, while the appeal was filed on 24.01.2023, thus there was delay of 240 days.

6. Learned counsel for the applicant further submitted that being aggrieved by the order of the Regulatory Authority the applicant sought legal advice from the Legal Advisor for filing an appeal and on receipt of the legal advice the applicant sought permission the Additional Housing Commissioner for filing an appeal and nomination of an advocate. On instruction from the advocate regarding bank draft for compliance under Section 43(5) of the Act 2016 vide letter dated 11.01.2023 money was demanded from the head office. The bank draft was handed over to the advocate on 12.01.2023. The advocate took some time to prepare the appeal and filed the same on 24.01.2023.

7. Lastly the learned counsel for the applicant submitted that the delay in filing the appeal is not intentional but is bona fide.

8. Learned counsel for the respondent vehemently opposed the application for condonation of delay. He further submitted that the instant case has been filed after expiry of limitation period and benefit of the Hon'ble Supreme Court's order passed in **Suo Moto Writ (Civil) Petition No. 3/2020** titled as In Re : "Cognizance for Extension of Limitation" will not be available to the applicant because vide this order, the period of limitation extended from 15.03.2020 to 29.05.2020 whereas the instant case has been filed with a delay of 240 days from the extended period of limitation by the Hon'ble Supreme Court.

9. It has also been submitted by the learned counsel for the respondent that no details of movement of file and time consumed in getting approval of the concerned levels have been mentioned and in the absence of such documents on record, only making submissions will not entitle the applicant to derive any benefit of the same. In view of the above, the application for condonation of delay as well as instant appeal deserve to be dismissed.

10. Now we proceed to examine the issue of condonation of delay, bonafides, sufficient cause shown, and the factors required to be considered in the light of various pronouncement of Hon'ble Apex Court where the principles are culled out on the issue of condonation of delay.

11. In the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*** **[(2013)12 SCC 649],** Hon'ble Apex Court enunciated broad principles in paras 21 and 22 as follows:-

> *"21. From the aforesaid authorities the principles that can broadly be culled out are:*
>
> *21.1 (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice.*
>
> *21.2 (ii) The terms "sufficient cause' should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
>
> *21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
>
> *21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
>
> *21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
>
> *21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
>
> *21.7(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
>
> *21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it*

may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed of course, within legal parameters."

Thus, broadly speaking, the approach, while considering a prayer or application seeking condonation of delay in instituting any proceedings, which should be adopted by a court or a judicial forum is that it should not proceed on the premise or assumption that delay in approaching the court is always deliberate and that the primary function of the court or of an adjudicatory authority is to adjudicate the dispute, rather than to shut its door to a litigant or a party.

12. The Apex Court in ***Ramlal, Motilal and Chhotelal V/s Rewa Coalfields Ltd. 1962 (2) SCR 762: AIR 1962 SC 361*** while construing Section 5 of the Limitation Act 1963 has held that the Court should bear in mind two important considerations while dealing with the explanation for condonation of delay. Firstly, that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which accrues to the decree holder by lapse of time should not be light-heartedly disturbed, and secondly, that if sufficient cause for the delay is shown, discretion is given to the Court to condone the delay. The Apex Court, however, has further ruled that:-

> *"It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condonation of delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant."*

13. In ***Arjun Singh V. Mohindra Kumar AIR 1964 SC 993,*** the Hon'ble Supreme Court explained the difference between a "good cause" and a "sufficient cause" and observed that every sufficient cause is a good cause and vice versa. However if any difference exists it can only be

that the requirement of good cause is complied with on a lesser degree proof than that of sufficient cause.

14. Further the expression “sufficient cause” 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, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. ***(Vide: Madanlal V. Shyamlal AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu and Ors. V. Gobardhan Sao and Ors. AIR 2002 SC 120).***

15. In the case of ***Pundik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448*** it is observed that :-

> *“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicaeut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”*

16. In ***Basawaaj and Ors V. The Spl. Land Acquisition Officer: (2013) 14 SCC 81,*** the Hon'ble Apex Court in para 9 & 15 was pleased to observe that:-

> *“9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word*

"sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

"15. The law on the issue can be summarized 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 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 tantamount to showing utter disregard to the legislature."

17. In ***Balwant Singh (dead) Vs. Jagdish Singh &Ors [(2010) 8 SCC 685],*** the Hon'ble Supreme Court explained the expression "sufficient

cause" to mean the presence of legal and adequate reasons. Hon'ble Supreme Court held as under:-

> "8. *There is no question of construing the expression of 'sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying f or the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading the legal representatives of the deceased or for setting aside the abatement."*

18. The Hon'ble Supreme Court in the case of ***Katari Surayanarayana Vs. Koppisetti Subba Rao***, reported in **AIR 2009, SC 2907** again had an occasion to construe the ambit, scope and application of expression 'sufficient cause'. Declining the application for condonation of delay, the Court, while discussing the case of Perumon Bhagvathy Devaswom Vs. Bhargavi Amma, reported in **(2008) 8 SCC 321** in its para 9 held as under:

> "9. *The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and*

> *circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant."*

19. The Hon'ble Supreme Court in ***Perumon Bhagvathy Devaswom Vs. Bhargavi Amma*** *(supra)* enunciated the following principles in paragraph 13 which need to be kept in mind while dealing an application under Section 5 of Limitation Act for condonation of delay. Paragraph 13 is as under:-

> *"13. (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*
>
> *(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

20. The Hon'ble Privy Council in the case of '***General Accident Fire and Life Insurance Corporation Ltd. Vs. Janmahomed Abdul Rahim'*** reported in (1939-40) 67 IA 416; (1941) 53 LW 212 : AIR 1941 PC 6 held as under:-

"A law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to particular party as the Judge

> *cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law."*

21. The Hon'ble Apex Court in the case of ***University of Delhi Vs. Union of India &Ors.*** [Civil Appeal Nos. 9488-9489 of 2019 arising out of SLP (Civil) Nos. 5581-5582 of 2019] in the month of December, 2019 while dismissing the appeal observed that the learned single Judge was not only justified in holding that the writ petition inter alia is hit by delay and laches but the decision of Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for any interference, while examining the judgment of ***Dehri Rohtas Light Railway Company Ltd. Vs. District Board, Bhojpur & Ors*** **(1992)2 SCC 598** wherein it has been indicated that the real test to determine the delay is that the petitioner should come to the Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence, further in the matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice.

The Hon'ble Apex Court further opined that condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective and in that back ground while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the facts of the situation. It has been further observed that in the case of **Katiji (Collector Land Acquisition Vs. Mst. Katiji&ors.)** decided by Hon'ble Supreme Court on 19.02.1987, the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

The Hon'ble Apex Court was further pleased to observe that in the matter of condonation of delay and laches, the well accepted position is that the accrued right of the opposite party cannot be lightly dealt with.

22. Further, Hon’ble Supreme Court in the case of ***Postmaster General and others Vs. Living Media India and another*** **(2012)3 Supreme Court Cases 563** was pleased to hold that law of limitation binds everybody equally and condonation of delay is an exception and should not be used as an anticipated benefit for any party. Paragraphs 27 to 30 of the said judgment are as follows:-

> *“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*
>
> *28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*
>
> *29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of*

> *procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*
>
> *30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."*

23. Admittedly the impugned order dated 18.08.2021 was uploaded on the website of the RERA on 02.09.2021. The limitation for filing the appeal was upto 02.11.2021 and the appeal was filed on 24.01.2023 with delay of about 448 days. As per endorsement on the certified copy of the impugned order, the applicant applied for certified copy of the impugned order on 19.01.2023 and the same was received by the applicant on the same day i.e. 19.01.2023.

24. The Hon'ble Supreme Court in its latest judgment passed in ***Civil Appeal No.3327 of 2020, V. Nagarajan Vs. SKS Ispat and Power Ltd & ors*** dated 22.10.2021 was pleased to observe that application for certified copy has to be made before expiry of the limitation period to claim benefit of exclusion of time requisite for obtaining a copy and if no application for certified copy has been made, no exclusion can ensue. The Hon'ble Apex Court further observed that the act of filing application for a certified copy is not just technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion.

25. At this stage we would like to refer the judgment of Hon'ble Supreme Court passed in SLPNo.2054-2055/2022 ***Lingeswaran etc. Vs. Thirunagalingam*** decided on 25th February, 2022, reported in 2022 LiveLaw (SC)227 wherein the Hon'ble Supreme Court has been pleased to observe that the court has no power to extend the period of limitation

on equitable grounds. Para 5 of the aforesaid judgment reads as follows:-

> *"5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the 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. 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.*
> *5.1 In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under: "The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation."*

26. The Hon'ble Supreme Court in the case of ***Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja, (2019)4 SCC 612*** vide paras 13,14, and 15 has been pleased to observe that in case Incharge of Legal Cell failed to discharge his duty promptly and with due diligence despite of availability of all facilities and infrastructure, he should be made answerable for lapse on his part and make good the loss suffered by the appellant. Paras 13,14 and 15 of the aforesaid judgment read as follows:--

> *"13. In our view, it was equally the duty of the appellants (their legal managers) to see that the appeal be filed in time. If the appellants noticed that their lawyer was not taking interest in attending to the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal be filed in time by another lawyer.*
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> *14. In our view, it is a clear case where the appellant HUDA, i.e., their officers, who were incharge of the legal cell failed to discharge their duty assigned to them promptly and with due diligence despite availability of all facilities and infrastructure. In such circumstances, the officers incharge of the case should be made answerable for the lapse on their part and make good the loss suffered by the appellants HUDA.*
>
> *15. A delay of 1942 days (4 years 6 months), in our view, is wholly inordinate and the cause pleaded for its condonation is equally unexplained by the appellants. In any case, the explanation given does not constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. It was, therefore, rightly not condoned by the High Court and we concur with the finding of the High Court."*

27. The Hon'ble Supreme Court of India in the matter of ***The State of Madhya Pradesh &Ors Vs. Bherulal SLP (C) Diary No. 9217 of 2020, dated 15th October 2020*** while dealing with the issue of delay by the Government department, was pleased to observe that :--

> *"We are constrained to pen down a detailed order as it appears that all our counseling to Government and the Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time*

> *period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed."*

The Hon'ble Supreme Court further observed that the matters like these are "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed.

28. The Hon'ble Supreme Court in the case of ***Boutique Hotels India (P) Ltd. Versus Assistant Commissioner of Income Tax, Circle 3(1), New Delhi,*** reported in 2019 SCC OnLine ITAT 14448, while examining the pleader's gross negligence or mistaken advice given by a lawyer negligently and without care, was pleased to hold that it is not a sufficient cause to condone the delay. The observation of Hon'ble Supreme Court reads as under:--

> *"A conscious decision by the assessee to not file appeal, does not take the character of sufficient cause within the meaning of Section 253(5) of I.T.Act. When it is consciously decided by assessee to not avail of right of filing of appeal and to, instead, only avail of right of filing Cross Objection, then the fact that Revenue did not file appeal, and thereby did not present the assessee with an opportunity for filing the Cross Objection; cannot constitute 'sufficient cause' for the assessee for not filing the appeal within the time limit prescribed u/s 253(3) of I.T.Act."*

> *"On overall consideration of the facts and circumstances of this case, we are of the view that not only was there gross negligence on the part of the assessee in filing of this appeal within time prescribed u/s 253(3) of I.T.Act, but also complete absence of sufficient cause. The assessee is seeking an unfettered free play in filing of the appeal at whatever time it pleases even after substantial delay without sufficient cause. Despite inaction and negligence,*

condonation of delay has been sought on fanciful and concocted grounds. We do not wish to promote the notion that ITAT is required to condone the delay in filing of appeal even when there is complete absence of sufficient cause for the delay. We wish to discourage the tendency to perceive delay as a non-serious matter. The lackadaisical propensity for delay exhibited in a non-challant way needs to be curbed."

".... a pleader's gross carelessness affords no ground for condonation of delay; that a legal advisor's mistake, in order to justify condonation of delay must be a bonafide mistake; that mistaken advice given by a lawyer negligently and without due care is not sufficient cause; that the mistake should be such, which even a skilled legal advisor, well-versed and experienced in law might make that mistake; that, the fact that there was lawyer's wrong advice has to be proved by the party seeking condonation of delay; and that the Counsel must disclose the circumstances in which incorrect advice was given and, it is not sufficient to make a perfunctory and general statement that wrong advice was given bonafide."

29. The Hon'ble Supreme Court in the case of ***Government of Maharashtra (Water Resources Department) Vs. Borse Brothers Engineers and Contractors Private Limited,*** reported in (2021)6 SCC 460, followed its observation made earlier in the case of ***Basawaraj Vs. LAO (2013) 14 SCC 81,*** which is quoted below:--

"15. The law on the issue can be summarized 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 should be justified in condoning such 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 tantamount to showing utter disregard to the legislature."*

30. In the case of ***Sabarmati Gas Ltd. Vs. Shah Alloys Ltd.,*** reported in (2023)3 SCC 229 the Hon'ble Supreme Court has observed as under:-

> *"40. As relates Section 5 of the Limitation Act showing "sufficient cause" is the only criterion for condoning delay. "Sufficient cause" is the cause for which a party could not be blamed."*

31. We would like to add further that the purpose of prescribing period of limitation is not to destroy the right of parties. It is meant to see that parties do not resort dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The period of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

32. On the basis of the aforesaid analysis we have no hesitation in observing that the applicant failed to show sufficient cause for condoning the delay

of 448 days which could warrant us to exercise our discretion for the purpose of condoning the delay after appreciating the same.

33. Accordingly, the application for condonation of delay is **rejected**. Consequently Appeal No. (D) 64/2023 is also **dismissed.**

34. Now the question arose as to what is to be done with respect to the amount deposited by the appellant/Greater Noida Industrial Development Authority u/s 43(5) of the Act, 2016.

35. The aims and objects of the Act is to provide for regulation and promotion of the real estate sector in an efficient and transparent manner and to protect the interests of the consumers in real estate sector. Proviso to Section 43(5) of the Act specifically provides that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained without the promoter first having deposited with the Appellate Tribunal at least 30% of the penalty, or such higher percentage as determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him before the said appeal is heard. The intent of the legislature is quite clear from the wording of proviso to Section 43(5) of the Act that the interest of the consumers i.e. allottees/buyers be protected.

36. The intent of the legislature in laying down the provision of pre-deposit of the amount of penalty or any other amount payable to the allottee by the promoter before the appeal can be heard in the Appellate Tribunal, has been elucidated by the **Hon'ble Apex Court in paragraph 127** of its judgment in the **Civil Appeal Numbers 6745-6749 of 2021 M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP** and others, the same reads as under:-

> *"127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties,*

are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him."

37. The Hon'ble Apex Court has clearly held that the legislature in its wisdom intended to ensure that the money which has been computed by the Authority at least must be safeguarded if the promoter intends to prefer an appeal before the Tribunal and in case, the appeal fails at a later stage, it should not be difficult for the consumer/allottee to get the amount recovered which has been determined by the Authority. It is in order to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the Authority that the legislature has in its wisdom laid the condition of pre-deposit by the promoter under Section 43(5) of the Act.

38. Section 40(1) of the Act of 2016 provides for a mechanism for recovery of interest or penalty or compensation and enforcement of orders etc. of the A.O. or the Regulatory Authority, or the Appellate Tribunal and the same shall be recoverable in such manner as may be prescribed as an arrears of land revenue. The **Hon'ble Apex Court** vide **paragraph 140**in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP** (supra) was pleased to observe that:-

> *"140. It is settled principle of law that if the plain interpretation does not fulfil the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonizing the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery of the amount invested by the allottee along with the interest incurred thereon is self explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act."*

39. As can be seen from the above observations, Hon'ble Supreme Court has held that even the principal amount invested by the allottee can be recovered as arrears of land revenue under Section 40(1) of the Act. It is further clarified by Hon'ble Supreme Court that the intention of the legislature is to provide a mechanism for early recovery of the amount invested by the allottee along with the interest incurred thereon.

40. Rule 23 of the U.P. Real Estate (Regulation and Development) Rules, 2016 provides that subject to the provisions of Section 40(1), the recovery of the amounts due as arrears of land revenue shall be carried out in the manner provided in the local laws. As Rule 23 has been framed under the provisions of Section 40(1) of the Act, the observations of Hon'ble Supreme Court on Section 40(1) shall equally apply to Rule 23 of the Rules 2016.

41. Although Section 40(1) of the Act of 2016 gives powers to the Appellate Tribunal to enforce its decisions, but the Tribunal does not have adequate infrastructure and the required sufficient human resource to

determine and certify the amount due from the appellant/promoter to be paid to the respondent/allottee.

42. It is our considered view that as per provisions of the Act and as per the observations made by the Hon'ble Apex Court, it is the duty of the Tribunal to arrange to transfer the pre-deposited money to the concerned allottee/consumer in case the promoter's appeal is dismissed. However, since the promoter might not have paid the full payable amount or there being a prospect of some amount having already been recovered from the promoter under execution proceedings at the level of the Authority or AO, it is just and lawful that the Tribunal transfers the amount to the Authority for transferring the same to the allottee/consumer after due diligence at its end and to recover any additional amount which could be due to be paid by the promoter; or return to the promoter any amount that could be in excess of the entitlement of the allottee/consumer.

43. The calculation of the exact amount due to be paid to the respondent/allottee normally is to be determined up to the date of actual payment. As the facts and figures are available with the Regulatory Authority, which is executing its or A.O.'s original order, therefore, due diligence is required while calculating the amount payable, interest thereon, as well as verification of the payments made by the allottee from time to time, etc.

44. In the instant case, the appeal of the applicant (Appeal No. D-64/2023) has been **dismissed** for want of **'sufficient cause'** to condone the delay in filing the instant appeal. We, therefore, direct the Registry to transfer the entire amount deposited by the appellant/promoter under the provisions of Section 43(5) of the Act to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA). Further, we direct the Regulatory Authority to dispose of this amount during the execution proceedings in accordance with its order dated 18.08.2021.

45. The functioning of the Tribunal became paperless from January 2022, but the system for depositing payment through online mode by the litigants under different heads could not be made operational and the same was to be deposited by the litigants in the shape of Bank Draft, but

subsequently NIC and State Bank of India succeeded in providing solution for making payment under all the heads through online mode and the State Bank of India also agreed to convert the amount deposited by the promoter under Section 43(5) of the Act into fixed deposit indicating complaint number, appeal number etc. within 24 hours for a period of 60 days with auto renewal thereafter, so that after decision in the appeal the amount be released as per direction of the Tribunal along with accrued interest on the said fixed deposit.

46. Discussion was made with the officials of the State Bank of India regarding providing benefit of interest on the deposited amount in the pending appeals. SBI also agreed to convert the amount deposited in different appeals, on the details provided by the Tribunal, into Fixed Deposits for a period of 60 days with auto renewal thereafter in the pending appeals. Accordingly, in all the pending appeals of the promoters, the amount deposited in pursuance to the provisions of Section 43(5) of the Act has been converted in fixed deposit in the month of June, 2023.

47. The Registry is directed to take steps for redemption of the amount of the fixed deposit in the instant appeal and send the same to the Regulatory Authority to be taken care as per the directions hereinabove.

48. It will be the liability of the beneficiary to pay the income tax on the interest earned on the deposited amount, if any.

Dated: 06.05.2024 **(Sanjai Khare)** **(D.K. Arora)**
Shakir