

**1. Appeal No. (D) 250/2023
U.P. Awas Evam Vikas Parishad.
Versus
Sudhir Kumar Srivastava.**

**With
2. Appeal No. (D) 251/2023
U.P. Awas Evam Vikas Parishad.
Versus
Manoj Kumar Shahi.**

**With
3. Appeal No. (D) 252/2023
U.P. Awas Evam Vikas Parishad.
Versus
Sushil Mohan Tiwari.**

**With
4. Appeal No. (D) 253/2023
U.P. Awas Evam Vikas Parishad.
Versus
Rajiv Verma.**

**With
5. Appeal No. 254/2023
U.P. Awas Evam Vikas Parishad
Versus
Avneesh Kumar Tiwari.**

**With
6. Appeal No. (D) 255/2023
U.P. Awas Evam Vikas Parishad
Versus
Mahendra Kumar Pandey.**

**With
7. Appeal No. (D) 310/2023
U.P. Awas Evam Vikas Parishad
Versus
Brijendra Kumar Sharma**

**With
8. Appeal No. (D) 312/2023
U.P. Awas Evam Vikas Parishad
Versus
Seema Tiwari.**

With
9. Appeal No. 314/2023
U.P. Awas Evam Vikas Parishad
Versus
Sailesh Awasthi.

With
10. Appeal No. 309/2023
U.P. Awas Evam Vikas Parishad
Versus
Om Prakash Yadav.

With
11. Appeal No. 353/2023
U.P. Awas Evam Vikas Parishad
Versus
Pramod Mitra.

With
12. Appeal No. 354/2023
U.P. Awas Evam Vikas Parishad
Versus
Amit Nigam.

With
13. Appeal No. 355/2023
U.P. Awas Evam Vikas Parishad
Versus
Arun Kumar.

With
14. Appeal No. 356/2023
U.P. Awas Evam Vikas Parishad
Versus
Ravi Ranjan Patel.

With
15. Appeal No. 357/2023
U.P. Awas Evam Vikas Parishad
Versus
Vinod Mitra.

With
16. Appeal No. 358/2023
U.P. Awas Evam Vikas Parishad
Versus
Amit Kant Awasthi.

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

1. Before we proceed to examine the instant matter/issue, we deem it proper to place on record that on demitting office by Technical Member from 26.09.2023 the judicial functioning of the Tribunal had come to a stand still with effect from 27.09.2023. On receipt of the notification dated 28.11.2023 with respect to appointment of Judicial Member, in the larger interest as well as to resume the judicial functioning of the Tribunal and to achieve the mandate of Section 44(5) of the Real Estate (Regulation & Development) Act 2016 read with Regulation 22 and 25 a Bench consisting of Chairman and Judicial Member was constituted vide order dated 01.12.2023. The Registry was directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 on joining of the Judicial Member. Accordingly an office order dated 02.12.2023 was issued by the Registrar, which reads as under:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.

2. An order of the Tribunal dated 17.01.2024 passed in I.A. No. 1009/2023 in Appeal No. 134/2019 was set aside by the Single Judge Bench of Hon'ble Allahabad High Court, Lucknow Bench, vide order dated 10.05.2024 passed in RERA Appeal Defective No. 9 of 2024 with a direction to the Tribunal to decide afresh keeping in view the mandate contained in Section 43(3) of the Real Estate (Regulation and Development) Act 2016 and Regulation 6(5) falling in Chapter V of the U.P. Real Estate Appellate Tribunal Regulations, 2019.
3. As per the observation/order of Hon'ble High Court dated 10.05.2024 the Bench of the Tribunal could not be constituted on account of non-availability of Technical or Administrative Member. Hence, in reverence to the order of the Hon'ble High Court and inability to constitute the Bench, the Tribunal was left with no option but to suspend the judicial functioning of the Tribunal till the appointment of the Technical/Administrative Member by the State Government. Accordingly the Tribunal issued an order dated 15.05.2024 to the same effect.
4. A Division Bench of the Hon'ble High Court took suo motu cognizance of the matter and after examining the order of Hon'ble Single Judge dated 10.05.2024 and the order of the Tribunal dated 15.05.2024 suspending the

judicial functioning of the Tribunal as well as the provisions of Section 55 of the Act 2016, which provides that no act or proceeding of the Appellate Tribunal shall be invalid merely by reasons of any vacancy in, or any defect in the constitution of the Appellate Tribunal not affecting the merits of the case, vide order dated 16.05.2024 directed that the functioning of the Tribunal, as it was taking place prior to 15.05.2024 shall stand resumed forthwith.

5. In compliance of the aforesaid direction of Division Bench of Hon'ble High Court dated 16.05.2024 the judicial functioning of the Tribunal has been resumed w.e.f. 21.05.2024.
6. Now we proceed to deal with the instant matter.
7. List revised. No one is present on behalf of respondent and no request for Passover/adjournment has been received either from the respondents or on their behalf. These matters are pending for more than one year.
 - 7.1 Learned counsel for the applicant submitted that Sri Pramod Mitra, learned counsel for the respondents was informed well in advance about listing of this matter along with other connected matters for today. The counsel for the applicant also sent message on mobile number of the learned counsel for the respondents.
 - 7.2 Order sheet reveals that Sri Pramod Mitra, learned counsel for the respondents, has sought adjournments on the last four dates i. e. 05.03.2024, 19.03.2024, 24.04.2024 and 13.05.2024 on the ground of illness or non-preparation of his brief. Section 44(5) of the Act 2016 mandates the Tribunal to make an endeavour to dispose of the appeal within 60 days from the date of its filing.
 - 7.3 As no one is present on behalf of respondent and no request for Passover/adjournment has been received, hence we proceed to examine the application for condonation of delay. Heard Sri Anurag Singh Advocate along with Sri Harit Mishra Advocate, learned counsel for the applicant.
8. Since the cause shown for condonation of delay in filing the appeal is similar in all the above mentioned 16 defective appeals as well as the appellant is also the same, therefore, they were heard together and the

application for condonation of delay in all the appeals is being disposed of by a composite order.

9. The date of impugned order, uploading date, limitation and delay in all the 16 defective appeals have been shown in the table below:--

Appeal No.	Particulars	Date of impugned Order	Date of Uploading of impugned order	Limitation Expired on	Date of Filling of appeal	Delay in No. of Days
D250/2023	UP Awas Vikas Parishad V/S Sudhir Kumar Srivastava	18/01/2023	19/01/2023	21/03/2023	31/03/2023	10 Days
D251/2023	UP Awas Vikas Parishad V/S Manoj Kumar Shahi	13/01/2023	13/01/2023	15/03/2023	30/03/2023	15 Days
D252/2023	UP Awas Vikas Parishad V/S Sushil Mohan Tiwari	13/01/2023	13/01/2023	15/03/2023	31/03/2023	15 Days
D253/2023	UP Awas Vikas Parishad V/S Rajiv Verma	13/01/2023	13/01/2023	15/03/2023	31/03/2023	16 Days
D254/2023	UP Awas Vikas Parishad V/S Avneesh Kumar Tiwari	13/01/2023	13/01/2023	15/03/2023	30/03/2023	15 Days
D255/2023	UP Awas Vikas Parishad V/S Mahendra Kumar Pandey	13/01/2023	13/01/2023	15/03/2023	30/03/2023	15 Days
D310/2023	UP Awas Vikas Parishad V/S Brijendra Kumar Sharma	26/08/2022	31/08/2022	30/10/2022	06/03/2023	125 Days
D312/2023	UP Awas Vikas Parishad V/S Seema Tiwari	26/08/2022	31/08/2022	30/10/2022	06/03/2023	125 Days
D314/2023	UP Awas Vikas Parishad V/S Sailesh Awasthi	26/08/2022	31/08/2022	30/10/2022	06/03/2023	125 Days
D309/2023	UP Awas Vikas Parishad V/S Om Prakash Yadav	26/08/2022	31/08/2022	30/10/2022	06/03/2023	125 Days
D353/2023	UP Awas Vikas Parishad V/S Pramod Mitra	30/06/2022	30/06/2022	29/08/2022	03/03/2023	247 Days
D354/2023	UP Awas Vikas Parishad V/S Amit Nigam	26/08/2022	26/08/2022	27/10/2022	06/03/2023	130 Days
D355/2023	UP Awas Vikas Parishad V/S Arun Kumar	30/06/2022	30/06/2022	29/08/2022	06/03/2023	247 Days
D356/2023	UP Awas Vikas Parishad V/S Ravi Ranjan Patel	26/08/2022	31/08/2022	30/10/2022	06/03/2023	124 Days
D357/2023	UP Awas Vikas Parishad V/S Vinod Mitra	30/06/2022	30/06/2022	30/08/2022	06/03/2023	247 Days

D358/2023	UP Awas Vikas Parishad V/S Amit Kant Awasthi	26/08/2022	31/08/2022	30/10/2022	05/03/2023	124 Days
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10. For the sake of convenience we take Appeal No. (D)250/2023 (U.P. Awas Evam Vikas Parishad Versus Sudhir Kumar Srivastava) as lead case.
11. Learned counsel for the applicant submitted that the impugned order was passed by the Adjudicating Officer on 18.01.2023 and the same was uploaded on the portal of UP RERA on 19.01.2023. The limitation for filing appeal was upto 21.03.2023, whereas the present appeal was filed on 31.03.2023 with a delay of 10 days. Certified copy of the impugned order dated 18.01.2023 was applied on 26.03.2023 and the same was received by the applicant on 27.03.2023. Learned counsel for the applicant further submitted that:
 - 11.1 Being aggrieved by the order of the Adjudicating Officer, the applicant, vide an office note, sought legal advice from the Legal Advisor for filing an appeal and after receipt of the legal advice the applicant further vide an office note sought permission from the Additional Housing Commissioner for filing an appeal and nomination of the advocate.
 - 11.2 After nomination the applicant collected all the relevant papers and handed over to the advocate for filing appeal. The advocate took some time to prepare the appeal and the appeal was filed on 31.03.2023 with a delay of 10 days.
 - 11.3 The delay in filing the appeal is not intentional but is bonafide and the same is liable to be condoned.
 - 11.4 The submission of the learned counsel for the applicant is that the issue of interest for delay in possession is to be examined by the Regulatory Authority, but the respondents wrongly approached the Adjudicating Officer for seeking compensation for delay. The respondent has also taken possession after execution of conveyance deed and, therefore, compensation for delay, if any, is to be examined by the Regulatory Authority and in fact that is a mechanical exercise which has to be performed by the Regulatory Authority from the promised date of

possession till the actual date of possession.

12. The respondents filed objections to the application for condonation of delay stating that the applicant has filed appeal after expiry of limitation period of 60 days. The applicant has failed to give any valid reason for delay, due to which the applicant is not entitled to get any relief and his appeal is liable to be dismissed on the ground of delay.

- 12.1 The respondents also placed reliance on the following judgments:--

- (1) Pundik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448.
- (2) Basawaaj and Ors. Vs. The Spl. Land Acquisition Officer, (2013) 14 SCC 81.
- (3) Postmaster General & Ors. Vs. Living Media India & Anr., (2012)3 SCC 563.
- (4) Civil Appeal No. 3327 of 2020 V. Nagarajan Vs. SKS Ispat and Power Ltd. & Ors. decided on 22.10.2021.
- (5) SLP No.2054-2055/2022 Lingeswaran etc. Vs. Thrunagalingam, decided on 25.02.2022, reported in 2022 Live Law (SC) 227.
- (6) Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja, (2019)4 SCC 612.
- (7) The State of Madhya Pradesh & Ors. Vs. Bherulal, SLP (C) Diary No.9217 of 2020, dated 15th October 2020.
- (8) Appeal No. (D)722/2022 U.P. Avas Evam Vikas Parishad Vs. Gajanan Tripathi, decided by the Tribunal.
- (9) Appeal No. (D) 773/2022 U.P. Avas Evam Vikas Parishad Vs. Satya Narayan Singh, decided by the Tribunal on 19.05.2023.

13. Shri Anurag Singh, learned counsel for the applicant submitted that the order of the Adjudicating Officer is without jurisdiction and it would amount to nullity as the matter goes to the root of the cause and the finding of a Court or Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no jurisdiction. The issue of lack of

jurisdiction is purely a question of law and can be raised at any stage. The Hon'ble Supreme Court in Appeal (Civil) No. 9493 of 1995 (*Sri Singam Chetty Attendrooloo & Ors. Vs. The State of Tamil Nadu & Ors.*) while examining the point of limitation was pleased to hold that an order can be challenged after expiry of the period provided therefore only if the order was without jurisdiction.

13.1 The learned counsel for the applicant further submitted that recently the Hon'ble Supreme Court *in Civil Appeal No. 5867 of 2015 (Sheo Raj Singh (deceased) through LRs & Ors. Vs. Union of India)* vide its order dated 09.10.2023, while examining the issue of condonation of delay, vide para 31 & 32 pleased to observe that it is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further the merits of a claim were also to be considered when deciding such applications for condonation of delay. Relevant paras 31 and 32 of the said judgment are quoted as follows:

31. *The order under challenge in this appeal is dated 21st December 2011, It was rendered at a point of time when the decisions in Mst. Katiji (supra), Ramegowda (supra), Chandra Mani (supra), K.V. Ayisumma (supra) and Lipok AO (supra) were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [State of M.P. v. Bherulal¹⁴ is one such decision apart from University of Delhi (supra)] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above. We find that the High Court in the present case assigned the following reasons in support of its order:*

a. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of

justice.

b. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.

c. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.

d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

e. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.

32. *Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not.*

14. In order to examine the issue raised by the learned counsel for the applicant, we first examine the issue of lack of jurisdiction and its effect. The ***Hon'ble Supreme Court in Smt. Shrisht Dhawan Vs. M/s Shaw Brothers (1992) 1 SCC 534*** has held as under:

“What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a Court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume

jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. “

In the light of Judgment rendered by Hon’ble Supreme Court in Smt. Shrisht Dhawan Vs. M/s Shaw Brothers, it is settled law that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated.

15. The Hon’ble Supreme Court in ***Dr. Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana & Ors (2013) 10 SCC 136*** held that:

Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ in executable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios & Anr., AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213). In Sushil Kumar Mehta v. Gobind Ram Bohra

(Dead) Thr. Lrs., (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in Premier Automobiles Ltd. v. K.S. Wadke & Ors., (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan, AIR 1954 SC 340; and Chandrika Misir & Anr. v. Bhaiyalal, AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, performance cannot be forced in any other manner.

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, it is an objection going to the nullity of the order on the ground of want of jurisdiction. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent.

16. Thus an order which is passed by any authority transgressing the jurisdiction assigned to him specially by the statutes, it would amount to nullity as the matter goes to the roots of the cause The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative intention. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply.
17. It is also settled proposition of law that a pure question of law not dependent upon any question of fact can be allowed to be raised for the first time before the appellant court. The Hon'ble Supreme Court vide its judgment in ***Chittoori Subbanna Vs. Kudappa Subbanna 1965 AIR (SC) 1325*** has held that a pure question of law not dependent upon any question

of Fact can be allowed to be raised for the first time before the appellant Court and the Apex Court in *State of Punjab and Ors. Vs. Dr. R.N. Bhatnagar and others* (1999) 2 SCC 330 clearly established that pure question of law in the absence of any disputed question of fact can be raised in supreme court and in *T.C. Appanda Mudaliar Vs. State of Madras* (1976) 4 SCC 821 has held that new pleas raising pure question of law relating to interpretation of Statutes can be raised and in *Saroj Rani Vs Sudarshan Kumar Chadha* (1984) 4 SCC 90 has held that pure question of law can be allowed to be raised even for the first time in Supreme Court and in *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta and others* (1993) Supp (1) SCC 594 has clearly held that pure question of law arising from the records, though never raised nor argued before can be raised and in *Lakshmi Shanker Mehrotra and others Vs. S.M. Sengupta and others* (1995) supp (4) SCC 40 has held that pure question of Law to fortify the original grounds for relief can be permitted to be raised as a new plea.

18. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae us sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-à-vis the litigating parties i.e. human beings, who are mortals.
19. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.
20. The RERA Act provides that every appeal shall be filed within a period of sixty days and also confer the discretionary power to the Tribunal that the Appellate Tribunal may entertain any appeal after expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that

period.

21. In view of the above analysis, we conclude that it is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay. Further, this Tribunal has been vested with the discretion to entertain any appeal after the expiry of 60 days on being satisfied that there is sufficient cause for not filing the same within a period prescribed.
22. Applying the above principles, it can be safely concluded that the condonation of delay is a discretionary power granted to the Tribunal vide its parent statutes, and the law of limitation was founded on public policy, some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.
23. As discussed earlier that since Statute is the only birth place of Jurisdiction and every authority derives jurisdiction from the Statute and no authority can assume the jurisdiction which had not been vested to him by the provision of the Act and jurisdiction cannot be derived by the mutual consent of the parties. If any authority passes any order transgressing its jurisdiction that order is considered to be a Nullity, and that order is not executable and the matter goes to its roots.
24. When an appeal challenging a non jurisdictional order is preferred before the Appellate Authority though belatedly and it is dismissed on Limitation the legal consequences will be by applying the above ratios will be held as amounting to a confirmation of the decree of the Trial Court on the merits of the case. Thus the decree of the Trial Court gets merged in the Appellate Courts decree even when the Appeal is dismissed on a preliminary ground or as time-barred. The logical sequitur of the analysis is that an Appeal

filed along-with an Application for condonation of delay in filing that Appeal when dismissed on refusal to condone the delay is a decree within the meaning of Section 2 (2) of the Code of Civil Procedure. Thus, such a situation will create a legal deadlock that prima facie appearing to be a non jurisdictional judgment under challenge will be held to be legal and valid against the settled principles of Hon'ble Supreme Court. This is the reason why the courts had been granted the discretionary power to condone the delay and applying the above ratios, condonation of delay is a discretionary power granted to the tribunal vide its parent statutes, and the law of limitation as being founded on public policy, hence some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice in such cases. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this; when delay is condoned, the highest that can happen is that a cause would be decided on merit after hearing the parties. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

25. Thus on the basis of the above discussion we can safely conclude that in cases where the jurisdiction and the competence of the authority passing the impugned order is under challenge, in case of delay the same may not be dismissed, instead exercising the discretionary powers and in the interest of justice, the delay deserves to be condoned unless the delay is not deliberate & intentional or negligence as well as want of due diligence or irresponsibly etc. and without sufficient cause.
26. In view of the aforesaid analysis and examining the cause shown as well as impugned judgments and orders, which prima facie appears to have been passed without jurisdiction, and since the issue of jurisdiction goes to the root of the matter and in order to examine the same on merit, in the interest of justice we deem it proper to condone the delay. Hence, **we allow the**

applications for condonation of delay in all the 16 cases. Accordingly the delay in filing the appeals is condoned. The Registry is directed to **convert the above 16 defective appeals into regular appeals.**

27. Heard learned counsel for the parties in all the 24 similar appeals and perused the documents available on record. **Judgment reserved.**

(Sanjai Khare)

(D. K. Arora)

Dated: 29.05.2024
Shakir