

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

MISC. CASE-473/2019

GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITYAppellant

Versus

MANISH KUMAR AGARWALRespondent

**Counsel for Appellant
RAJESH CHADHA**

**Counsel for Respondent
KUSHAGRA DIKSHIT**

**Hon'ble Mr. T.B. Singh, Judicial Member
Hon'ble Mr. K.K. Jain, Technical Member**

Disposal of an application dated 14.09.2019 for condonation of delay and its objection dated 18.12.2019.

1. The applicant has moved an application dated 14.09.2019 for condonation of delay supported with affidavit in filing the instant appeal with the following submissions :
 - 1.1 That the appellant is filing the present appeal against the impugned order of the learned RERA Authority, and craves leave to refer and rely upon the said appeal as part and parcel of the instant application is not repeated for sake of brevity herein may please be read as part and parcel of this application as well.
 - 1.2 That applicant was not communicated and served with the attested copy of the impugned order dated 20th February, 2019 (uploaded on its website allegedly on 14.03.2019) by the office of RERA Authority at any point of time, and received attested copy on 18.07.2019 and as such instant appeal is being filed within a period of sixty days as per Section 44 of the Real Estate Regulation and Development Act, 2016 is within limitation.
 - 1.3 That it is submitted that even though applicant is not aware of uploading of the impugned order on its website by the RERA Authority made on 14.03.2019 as

revealed, however uploading of the impugned order without receiving of attested copy of the same by the aggrieved person is no communication in the eyes of law till the attested copy of same is being provided as per provisions contained under Section 44(2) of the said Act, 2016.

- 1.4 That in furtherance Rule 25 of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (hereinafter for short referred to as 'Rules') which stipulates interalia for filing of appeal alongwith the attested true copy of the order against which the appeal is to be filed.
- 1.5 That thus it is submitted that as per said provisions of Section 44(2) of the Act the appeal to be filed in sixty days from the date on which copy of impugned order is being received by the aggrieved person. Thus applicant received the attested copy on 18.07.2019 from the office of the RERA Authority and never being communicated or served or received by the applicant at any point of time, hence appeal filed is well within limitation. However instant application for condonation of delay is being filed in order not to have any technicalities in the matter for kind consideration of the Hon'ble Tribunal.
- 1.6 That it is further submitted that even though applicant was not communicated or received the attested copy of impugned order which was to have been sent by the RERA Authority to the parties and to the applicant a person aggrieved upon passing of the said impugned order, and as such it is submitted that uploading of order impugned on website is no communication of same is being received by the parties, and as such attested copy is being made available on 18.07.2019 to applicant and thus appeal is being filed which is well within limitation.
- 1.7 That however applicant official concerned with the instant scheme in question came to know very late some where in the last week of May, 2019 and accordingly at that time and prior to it and after as well in view of sensitive matter of dispute of Makoda village in question in scheme RPS-02, Zeta-02 where the plots are

concerned of the allottees in which it took time for exploring the situation and possibility of some other alternative, but same could not be explored in view of situation beyond control of applicant, and as such finally decision for taking actions as per Clause U-3 of brochure was brought before the CEO of Authority and ultimately decision by Board of the applicant took to cancel the scheme and refund of deposit with 4% interest as per said clause as stated in memorandum of appeal.

- 1.8 That said Board decision taken in 114th Board meeting of applicant was thus accordingly by way of office order dated 18.07.2019 was issued by applicant and was put into information for public at large.
 - 1.9 That at last the applicant has prayed that applicant was not communicated with the attested copy of order and as such applicant was made available attested copy on 18.07.2019 and thus appeal is being filed which is in the circumstances within limitation.
 - 1.10 That however, Hon'ble Tribunal deems otherwise, then in the above circumstances Hon'ble Tribunal may be pleased to condone the delay in filing appeal (even though there is no delay in aforesaid circumstances) in the interest of justice and equity as there is no deliberate act of any delay on the part of applicant but owing to above reasons is liable to be condoned otherwise applicant shall suffer irreparable loss and injury which cannot be compensated in the monetary terms, and also considering the fact that applicant works on no profit and no loss basis for the benefit of the public at large.
2. **The respondent has filed** objections dated 18.12.2019 against the delay condonation application with the following contentions :

- 2.1 That the instant appeal is being preferred by the applicant challenging the order dated 20.02.2019 passed by learned Real Estate Regulatory Authority, Gautam Budh Nagar, Uttar Pradesh (herein after refer as RERA).
- 2.2 That it is submitted that impugned order was uploaded and communicated to the parties on 14.03.2019. The respondent received the order through email from the official mail id of RERA (info-uprera@up-rera.in) on 14.03.2019.
- 2.3 That it is also submitted that the impugned order dated 20.02.2019 was also communicated to the applicant on 14.03.2019 as the email was also addressed to the applicant; hence the applicant was having the full knowledge of the impugned order dated 20.02.2019 on 14.03.2019.
- 2.4 That from the date of the knowledge of the order passed by the learned RERA Authority, the period of 60 days as provided under Section 44(2) of the RERA Act, 2016 expires on 14.05.2019, hence the applicant could have filed the instant appeal on or before 14.05.2019, which the applicant has failed to do so.
- 2.5 That the applicant preferred an appeal before this Hon'ble Tribunal with the delay of more than **approx 120 days** and has played fraud by misleading this Hon'ble Tribunal regarding the non communication of the order passed by learned RERA.
- 2.6 That the delay condonation application filed by the applicant is sheer abuse of process of law after bundle of concealment and suppression of facts on the basis of false affidavit that cannot be taken into consideration simply on the account that fraud vitiates everything and further it is the settle law that the person is not entitled to get any relief from the any competent court of law who approaches without clean hands particularly after the concealment and suppression of the facts.
- 2.7 That the instant appeal should be dismissed on the ground of delay in filing appeal and false affidavit filed by the applicant in the present appeal.

- 2.8 That it is settled principle that if the party does not disclose full facts and suppressed relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter.
- 2.9 That in the case of ***The Secretary, Hailakandi Bar Association Vs. State of Assam & Anr., AIR 1996 SC1925***, the Apex Court held that filing inaccurate documents deliberately, with a view to mislead the Court, amounts to interference with the due course of justice by attempting to obstruct the Court from reaching a correct conclusion, and thus, amounts to contempt of Court. Similar view has been reiterated by the Apex Court in ***Dhananjay Sharma Vs. State of Haryana & Ors., (1995) 3 SCC 757***; and ***Rita Markandey Vs. Surjit Singh Arora, (1996) 6 SCC 14***, observing that deliberate attempt to impede the administration of justice or interference or tending to interfere with or obstruct, or tend to obstruct the administration of justice, in any manner, amounts to criminal contempt.
- 2.10 That in ***The Advocate General, State of Bihar Vs. M/s. Madhya Pradesh Khair Industries & Anr., AIR 1980 SC 946*** the Apex Court held that every abuse of the process of the Court does not necessarily amount to contempt of Court, but a calculated attempt to hamper the due course of the judicial proceeding or administration of justice shall definitely amount to contempt of the Court, and in such a case, punishment to the contemnor is necessary to prevent the abuse and making a mockery of the judicial process, as it adversely affects the interest of the public in the administration of justice.
- 2.11 That the applicant has not adduced any evidence to satisfy the Hon'ble Tribunal that the applicant has not received the copy of the impugned order dated 20.02.2019 despite having opportunity with it to adduce the documentary evidence to that effect after inspecting the record of Learned RERA.
- 2.12 That Section 44(2) of the Real Estate Act, 2016 reads as under :-

“(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.”

2.13 That it is apparent from the perusal of the above stated language of the proviso to Section 44(2) of the Act that the Appellate Tribunal may entertain the appeal after expiry of the sixty days only if it is satisfied that there was a sufficient cause for not filing it within that period.

2.14 That the Hon’ble Supreme Court in the case of ***Basawaraj and others vs The Special Land Acquisition Officer*** reported in ***2013(14) SCC 81*** has been pleased to define the word “sufficient” under Section 5 of the Limitation Act, 1963. The relevant extract is reproduce for the convenient of this Hon’ble Tribunal :-

“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.”

2.15 That an unlimited limitation would lead to a sense of insecurity and uncertainty and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party’s own inaction, negligence or laches.

2.16 That the Hon’ble Supreme Court in the matter of ***Brijesh Kumar and other vs State of Haryana and other, 2014(11) SCC 351*** has laid down that :-

“The Privy Council in [General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim](#), AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that “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 a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law.”

2.17 That it is a well settled principle of law that if some person has taken a relief approaching the court just or immediate after the cause of action has arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

2.18 That it is apparent that the application for condonation of delay in filing the appeal should be as per the principle of law laid down by Hon’ble Supreme Court in catena of judgment.

2.19 That the applicant application for condonation of delay must be rejected on the ground that the applicant has not shown the sufficient cause for delay in filing the present appeal and the applicant has played fraud with this Hon'ble Tribunal by giving wrong and incorrect information.

2.1 At last, the counsel for respondent submitted that the present appeal may be dismissed with cost and amount deposited by the applicant may be awarded in favour of respondent.

3. **Against the objection dated 27.01.2020** filed by the respondent the applicant has filed a replication dated 11.01.2020 with the following submissions :-

3.1 That the applicant has gone through the contents of the objections of the respondent to the application for condonation of delay of applicant and deny the contents of the same which are contrary to the application for condonation of delay, save and except which are matters of record to be dealt with at the time of hearing and/or disposal of the said application.

3.2 That the applicant has given explanation with reasons in its application for delay condonation in filing of the instant appeal which in circumstances is liable to be condoned else applicant who is a Development Authority will suffer immensely in case delay is not condoned is a creature of State Instrumentality is working on no profit no loss basis to serve the people at large dealing with thousands of customers to serve them with affordable housing.

3.3 That it is submitted that uploading of impugned order on 14.03.2019 by the RERA Authority as applicant is not aware of the same who received the attested copy of impugned order only on 18.07.2019 and thereafter instant appeal has been filed which for the reasons stated in delay condonation application and herein is in limitation. It is also respectfully submitted that uploading of the impugned order without sending the attested copy of the same to the applicant and/or aggrieved

person is no communication in the eyes of law till the attested copy of same is being provided as per provisions contained under Section 44(2) of the said Act, 2016 by sending the same to the parties by the RERA Authority of its own. In this regard kind attention is drawn to the celebrated judgment of the Hon'ble Supreme Court of India rendered in the matter of ***Housing Board Haryana vs Housing Board Colony Welfare Association*** reported in ***III (1995) CPJ 28 SC***.

- 3.4 That it is submitted that applicant has received attested copy of impugned order on 18.07.2019 and as such appeal filed thereafter is within a period of 60 days as per limitation.
- 3.5 That it is submitted that there is no delay and thus there is no fraud played as alleged or any misleading with the Hon'ble Tribunal. It is also denied that the application is abuse process of law or having any concealment or suppression of facts or false affidavit as alleged are wholly imaginary allegations are denied as wrong and put to strict proof thereof. There is no concealment of any nature at all and applicant has come with clean hands, thus appeal is liable to be allowed as well as application for delay condonation. It is further submitted that applicant has disclosed all relevant facts which are necessary for proper adjudication of the case.
- 3.6 That it is submitted that applicant has shown sufficient cause in its appeal and in the delay condonation application in filing of appeal.
- 3.7 That it is submitted that there is no delay in circumstances in the filing of appeal and as such application for delay condonation filed on safer side in order not to have technicalities is liable to be allowed by the Hon'ble Tribunal.
- 3.8 That Hon'ble Supreme Court in the case of ***N. Balakrishnan vs M. Krishan Murty*** reported in ***1998(1) 7 SCC 123*** has held that – “time limit fixed for approaching the Court in different situations is not because on expiry of such time a bad cause would transform into a good cause.” Hon'ble Supreme Court has further held that Rules of limitation are not meant to destroy the rights of parties, rather they are

meant to ensure that parties are not able to adopt a dilatory tactics, but seek their remedy promptly. The Hon'ble Supreme Court has further observed in Para-12 of said judgment as under :-

“A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice

.....

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

- 3.9 That similarly in the case of **Collector, Land Acquisition, Anantnag vs Mst. Katiji** reported in **(1987) 2 SCC at page 107** has held that the power to condone the delay is conferred in order the courts to do substantial justice to the parties by disposing the matters on merits and further held that the ‘substantial cause’ is elastic enough to enable the Courts to apply the law in meaningful manner to subserve the ends of justice. The Hon'ble Supreme Court in the said case goes on to the extent of observing that to subserve the ends of justice is the life purpose of existence of the institution of Courts, and thus Hon'ble Supreme Court in the said case of **Collector Land Acquisition** calls for adopting a liberal approach in the matters relating to the condonation of delay in instituting the proceedings before

the Courts which will be applicable to other judicial for as well, and thus has formulated the principles in that regard in its said judgment.

3.10 That thus for the reasons stated in the application for condonation of delay and herein there is no deliberate act on the part of the applicant in filing of an appeal nor any delaying tactics on the part of the applicant and as such Hon'ble Tribunal may be pleased to condone the delay, if any, for adjudication of proper and real cause in the controversy for having the appeal to be decided on merits, else applicant shall suffer irreparable loss and injury which cannot be compensated in the monetary terms and be graciously pleased to allow the application for condonation of delay in the interest of justice and equity for which applicant shall remain every duty bound.

4 **We heard the arguments of learned counsels** for both the parties and perused the records.

4.1 The main argument of the learned counsel for the applicant was that as per provisions of Section 44(2) of the Act the appeal must be filed in sixty days from the date on which copy of the impugned order is received by the aggrieved person. He further submitted that the applicant received the certified copy on 18.07.2019 and instant appeal was filed on 16.09.2019 which is well within the time.

4.2 Countervailing the argument of the learned counsel for the applicant, the learned counsel for the respondent submitted that the impugned order dated 20.02.2019 was communicated to the applicant on 14.03.2019, it means applicant was having full knowledge of the impugned order dated 20.02.2019 on 14.03.2019. Thus the appeal should have filed on or before 14.05.2019 as per provisions of Section 44(2) of the Act, but the applicant has failed to do so without assigning any sufficient cause.

4.3 Now we perused the records.

4.4 From the perusal of records it is obvious that impugned order was passed on 20.02.2019 which was uploaded on the RERA website on 14.03.2019 and as per provisions of the Act the instant appeal ought to be filed on or before 14.05.2019. But the learned counsel for the applicant deriving the aid from Section 44(2) of the Act stated that certified copy was obtained on 18.07.2019 and the instant appeal was filed on 16.09.2019 which is within time.

4.5 Now before proceeding further it is desirable to note here Section 44(2) of the Act, which is reproduced below :-

“(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.”

From the aforesaid provisions of Section 44 (2), the following inferences can be drawn:

- i. The period of limitation is sixty days and the appeal shall be preferred within a period of sixty days.
- ii. The period of limitation shall be counted from the date on which a copy of the impugned direction or order or decision given by the authority or the adjudicating officer is received.

In our view, the provisions contained in **Section 44(2)** signify the communication of order, decision or direction through electronic media also. If, it is not taken as such, the mandate given in section 44(5) of the Act, 2016 to decide the appeal within a period of sixty days will prove meaningless.

If we take literal meaning of Section 44(2) of the Act the inferences can be drawn that the appeal must be filed in sixty days from the date on which copy of the impugned order is received by the applicant/appellant.

In the instant case the applicant received the certified copy on 18.07.2019 whereas the same was applied on 17.07.2019, and the instant appeal was filed on 16.09.2019, thus the appeal is filed within sixty days after receiving certified copy of the impugned order.

This is also worthnoting here that uploading of the impugned order without sending the attested copy of the same to applicant is communication in view of Information and Technology Act, 2000.

In the instant case there is delay of approximately 120 days and the applicant has not explained the every day's delay. But the it is also observation of the Hon'ble Supreme Court that the explanation of every day's delay does not mean that the court should be reluctant to hear the cases on merit but the result would be different where the applicant has been very negligent in preferring the appeal within time.

4.6 The Hon'ble Supreme Court in catena of judgments has held that a liberal and pragmatic approach should be taken while condoning the delay in filing the appeal.

In **Union of India vs. Gaini, A.I.R. 2011 S.C. 977**, the Hon'ble S.C. observed:

“The court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice oriented approach”.

In **Abdul Gafoor vs. State of Bihar, A.I.R. 2012 S.C. 640**, the Hon'ble S.C. said:

“Court should be reluctant to shut out consideration of case on merits on grounds of limitation or other technicality.”

The Hon'ble Apex Court in **N.Balakrishnan vs. M.Krishna Murthy, (1987) 7 SCC 123**, observed as blow:

“.....time-limit fixed for approaching the court in different situations is not because on expiry of such time a bad cause would transform into a good cause.”

In Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in 1987 2 SCC at page 107= AIR 1987 SC 1353 the Hon'ble S.C. has observed:

“.....the power to condone the delay is conferred in order to enable the courts to do substantial justice to the parties by disposing of the matters on merits and further that the expression “sufficient cause” is elastic enough to enable the courts to apply the law in a meaningful manner to sub-serve the ends of justice. Hon'ble Supreme court goes on to the extent of observing that to sub-serve the end of justice in the life-purpose of existence of the institution of Courts.”

“.....1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. 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 con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.....” (Emphasis Supplied)”

In Smt. Rani Kusum v. Kanchan Devi and Ors. AIR 2005 SC 3304, the Hon'ble Court has held :-

“.....Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the

handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non- extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form".

The Hon'ble Apex Court in **Saleem Advocates Bar Association, Tamil Nadu v. Union of India, AIR 2005 SC 3353** has observed herein under :-

".....The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress....."

Further, the reliance has been placed by the applicant on the Hon'ble Kerala High Court's judgment in the case of **Vasu & Co. v. State of Kerala, (2001) 124 STC 124 (Ker.)**, wherein it was held that :-

"..... We are of the view that it is not necessary in all cases to give evidence regarding the delay in filing appeals. The affidavits are documents of evidence. On the basis of the affidavits, if the Court is satisfied that sufficient explanation has been given for condoning delay, then the affidavit can be accepted as evidence."

The Hon'ble High Court, Gujarat in-
Vasantbhai Soni vs. State of Gujarat & Anr. ABC 2016(II) 543, has held:

“It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

The Hon’ble High Court, has further observed:

“The term “every day’s delay must be explained” does not mean that a pedantic approach should be made. The doctrine much be applied in a rational common sense pragmatic manner.

“When substantial justice & technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.”

In **Union of India vs. Gaini, A.I.R., 2011 S.C. 977**, the Hon’ble S.C. observed:

“The Court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice oriented approach.”

The Hon’ble High Court In **New India Insurance Co. Ltd. V. Smt. Shanti Misra reported in AIR 1976**, held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The express “sufficient cause” should receive a liberal construction.

In **Shakuntala Devi Jain V. Kuntal Kumari reported in AIR 1969 SC 575** the Hon’ble Supreme held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

In **O.P. Kathpalia v. Lakhmir Singh reported in AIR 1984 SC 1744** the Hon’ble Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice, it would be ground to condone the delay.

Further Hon’ble the Supreme Court in the case of **Haribhai Lakhmanbhai seedhav vs. State of Gujarat and two others, 2009(27) LCD 1645** also held that the Court should not reject appeal/revision on the ground of delay and the same should be decided on merit.

The Hon’ble Supreme Court in re: **The State of Madhya Pradesh and Ors. vs. Bherulal, report in (2020) 10 SCC at page 654** has observed as under:-

“A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go by.”

In the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy And Others (2013) 12 SCC 64**, the Hon’ble Supreme Court has observed as below:--

- (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 legalise injustice but are obliged to remove injustice.
- (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.
- (iii). Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (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.
- (v). Lack of bona-fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (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.
- (vii). The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.**
- (viii). There is a distinction between inordinate delay and 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.
- (ix). The conduct, behaviour 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.**
- (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.**
- (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.

(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.

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

(xiv). 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.

(xv). 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.

(xvi). 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.

(xvii). The increasing tendency to perceive delay as 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 an adjudicatory authority is to adjudicate the dispute rather than to shut its door to a litigant or a party.

Hon'ble supreme court in the case of ***Baswaraj and another vs. Special Land Acquisition officer, (2013) 14 SCC 81*** has ruled that expression "sufficient cause" should receive a liberal interpretation to ensure that substantial justice is done, however, Hone'ble Supreme court has further observed in the said

judgment that such liberal interpretation should be given only as long as negligence, inaction or lack of bona-fides cannot be imputed to the party concerned.

The Hon'ble Apex Court in the case of **M/s Dehri Rohtas Light Railway Company Ltd. vs. District Board, Bhojpu & Ors (1992) 2 SCC 598** observed 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.

In **Balwant Singh (dead) vs. Jagdish Singh & Ors. reported in (2010) 8 SCC 685**, the Hon'ble Supreme Court explained the expression "sufficient cause" to mean the presence of legal and adequate reasons.

In fact, it must be the endeavour of the Court as far as possible to decide the case on merit by giving an expression 'sufficient cause' the pragmatic justice oriented approach.

In view of the above detailed discussions, the delay condonation application dated 14.09.2019 supported with affidavit deserves to be allowed at the cost.

ORDER

The delay condonation application dated 14.09.2019 supported with affidavit is **allowed** subject to payment of cost of Rs. 20,000/= out of which Rs. 10,000/= shall be deposited in Tribunal's fund and rest amount of Rs. 10,000/= shall be given to the respondent.

Let this misc. case be registered as regular appeal.

List this appeal on **04/08/2022**.

Dated: 30/05/2022

pradeep/-

(K.K. Jain)

(T.B. Singh)

Judgment/order signed, dated and pronounced in open Court.

(K.K. Jain)

(T.B. Singh)

Dated: 30.05.2022
PRADEEPKUMAR

Misc. Case No. 473/2019

Hon'ble Mr. Tej Bahadur Singh, Judicial Member

Hon'ble Mr. Kamal Kant Jain, Technical Member

Delay Condonation application **allowed**.

For order, see our order of date passed on separate sheets.

List this appeal on **04.08.2022**.

Dated: 04/05/2022

pradeep/-

(K.K. Jain)

(T.B. Singh)