

IN THE HIGH COURT OF JUDICATURE AT PATNA

Raj Kumar Sah & Ors.

vs.

Chandrabhan Singh & Ors.

FA No. 57 of 2023

28 November 2024

(Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

- Whether the delay of 187 days in filing the first appeal was sufficiently explained to warrant condonation under Section 5 of the Limitation Act?
- Whether the grounds raised in the supplementary affidavit cure the defects or vagueness in the original interlocutory application?
- Whether the doctrine of substantial justice prevails over strict procedural compliance in the present facts?

Headnotes

Circumstances explained by the appellants in the present application regarding the delay of 187 days having occurred on their part in filing the present appeal are sufficient to condone the said delay. (Para 5); Though an explanation for the delay of each and every day has not been given but there are important circumstances which show that the Pairvikar being an old aged person was suffering from old age ailments during the relevant period of delay, secondly, he belongs to rural area. Thirdly, he has taken the plea that during the relevant period the appellants had no sufficient money to file the appeal and some delay took place in arranging the money. (Para 5)

Case Law Cited

Mosmat Ram Kali Kuer & Ors. v. Indradeo Choudhary & Anr., AIR 1985 Patna 148; Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157; Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649; Basawaraj & Ors. v. Special Land Acquisition Officer, (2013) 14 SCC 81; Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) 2 SCC 107

List of Acts

Limitation Act, 1963 (Section 5)

List of Keywords

Limitation Act; Section 5; Delay Condonation; Substantial Justice; Bona Fide; Procedural Delay; Rural Litigants; Title Suit; Supplementary Affidavit; Liberal Interpretation

Case Arising From

Title Suit No. 282 of 2022, District Court, Jamui

Appearances for Parties

For the Appellants: Mr. Shabbir Ahmad, Advocate

For the Respondents: Mr. J.S. Arora, Senior Advocate, Mr. Prabhat Ranjan Singh, Advocate

Headnotes prepared by Reporter:Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.57 of 2023

- 1. Raj Kumar Sah S/O Late Daso Sah, Resident of Mauza- Malaypur, P. O. - Malaypur, P.S-Malaypur, Anchal-Barahat, District - Jamui.
- 2. Ram Chandra Sah S/O Late Daso Sah Resident of Mauza- Malaypur, P. O. - Malaypur, P.S-Malaypur, Anchal-Barahat, District - Jamui.
- 3. Shyam Sundar Sah S/O Late Daso Sah Resident of Mauza- Malaypur, P. O. - Malaypur, P.S-Malaypur, Anchal-Barahat, District - Jamui.
- 4. Sanjay Kumar S/O Late Daso Sah Resident of Mauza- Malaypur, P. O. - Malaypur, P.S-Malaypur, Anchal-Barahat, District - Jamui.

... .. Appellant/s

Versus

- 1. Chandrabhan Singh S/O Kanhaiya Singh, Resident of village- Daulatpur, P.S.and District-Jamui
- 2. Harendra Kumar Singh S/o Late Pramod Kumar Singh, Resident of Village-Malaypur,. PO- Malaypur, P.S.- Malaypur, District -Jamui.
- 3. Anuj Kumar Singh S/O Shri Mukesh Kumar Singh, Resident of Village-Malaypur,. PO- Malaypur, P.S.- Malaypur, District -Jamui.
- 4. Dharmendra Singh S/o Late Sitaram Singh, Resident of Village-Malaypur, P.O-Malaypur, P.S Malaypur, District- Jamui, at present Quarter No. 88/2/3 Housing Colony, Near Hanuman, Mandir Chhota Govindpur, Jamshedpur, Eastern Singhbhum (Jharkhand).
- 5. Kumar Suraj S/O Sri Kishor Kumar Mishra, Resident of Malaypur, P.O.- Malaypur, District-Jamui.
- 6. Ashok Saw, S/O Late Ganesh Saw, Resident- Near Chhat Talav, Manaytand, P. O and P. S.-Dhanbad, District- Dhanbad (Jharkhand).
- 7. Binod Kumar S/O Late Hira saw, Resident of Electricity Board colony, Road No.01 Buddha Colony, Patna.
- 8. Ajay Saw S/O Late Jagat Saw, Resident of Gayghat Basti Para, Haripur Pandeshwar Vardhman (West Bangal).
- 9. Mintu Saw S/O Late Jagat Saw, Resident of Haripur, Bagdha Vardhman (West Bengal).
- 10. Rajesh Kumar Saw, S/O Jagat Saw, Resident of -New Bazar Durga Mandir Gali, Lakhisarai, P. O, P. S.and District- Lakhisarai.
- 11. Santosh Saw S/o Late Rajender Saw, Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.
- 12. Krishna Saw S/o Late Suresh Sah, Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.
- 13. Balram Saw S/O Late Suresh Sah, Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.
- 14. Ramesh Saw S/o Late Bholanath Sah, Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.



- 15. Umesh Sah S/o Late Bholanath Sah, Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.
- 16. Dinesh Sah Resident of Mauza- Malaypur, P. O. - Malaypur,PS - Malaypur, Anchal- Barahat, District - Jamui.

... .. Respondent/s

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Appearance :
For the Appellant/s : Mr. Shabbir Ahmad, Adv.
For the Respondent/s : Mr. J.S. Arora, Sr. Adv.
Mr. Prabhat Ranjan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

18 28-11-2024 **I.A. No. 01 of 2023**

The instant interlocutory application filed under section 5 of the Limitation Act is taken up for consideration on the appellants’ prayer to condone the delay of 187 days occurred in filing this appeal.

2. Mr. Shabbir Ahmad, learned counsel for the appellants submits that though the delay of 187 days took place in filing the present appeal on the part of the appellants but there were some circumstances which justify the said delay. Firstly, the Title Suit No. 282 of 2022 filed by the appellants was heard by the trial court on 29.09.2022 and the impugned order was passed on the same day but the appellants were kept in dark about the result of their suit and on 06.10.2022, they heard a rumor regarding dismissal of their suit and then the appellants went to Civil Court, Jamui, contacted their learned counsel on 07.10.2022 and became highly surprised after knowing the



factum of dismissal of their suit on the first date of hearing, i.e., 29.09.2022 and the next date, 30.09.2022 was clearance day and from 01. 10.2022 to 09.10.2022, there was vacation in the court due to *Durga Puja* festival. The appellants filed requisition to get certified copy of judgement and order dated 29.09.2022 on 07.10.2022 which was delivered on 17.10.2022, ten days after filing of the requisition. The last date of the prescribed period of limitation for filing the appeal was 02.01.2022 after excluding the delay period happened due to holidays in court and delay in supplying the certified copy of the impugned judgement etc. It is further submitted that the most important circumstance to explain the reason for delay is that the appellant No.1, *Pairvikar* of the appeal, is 66 years old, suffering from old age ailments and having ignorance of law of limitation, he was unable to manage the required money for filing the instant appeal on account of his economic condition, however, he managed the necessary money and came Patna and instructed his lawyer to take legal remedy on 06.06.2023 during summer vacation, hence, there was no intentional delay on the part of the appellants and they were prevented from filing the present appeal within the limitation period on account of the said unavoidable circumstances and the said delay may be condoned.



Learned counsel for the appellants has placed reliance on the judgement of this court passed in the case of **Mosmat Ram Kali Kuer & Ors vs. Indradeo Choudhary & Anr** reported in **AIR, 1985, Patna 148**, relevant portion upon which reliance has been placed is reproduced herein below:-

“9. It has been held by Courts that if an appeal is presented out of time and is admitted by the court the respondent cannot be allowed to raise a preliminary objection to the appeal when the case is taken up on merit. An application ought to be made by way of motion. Court will never allow people to wait upon their right, while the other party incurs expenses. See AIR 1923 Mad 82 -- Marugappa Naicker v. Theyammal. Further, if in an explainable circumstance an appeal is filed, without a formal or written application for excusing the delay in presenting the appeal, then the court should afford a reasonable opportunity to the parties to mend matter to avoid miscarriage of justice (See AIR 1975 Mad 137 Meghraj v. Jesrai Kasturjee and another.) Some cases have taken the view that language of [Section 5](#) does not provide that an application in writing must be filed before relief under the said provisions can be granted See AIR 1936 All 666 - Mt. Kulsoom un-Nissa v. Noor Mohammad. Sulaiman, J, Chief Justice speaking for the Bench in the case of Mt. Kulsoom-un-Nissa (supra) while dealing with the question of



limitation observed :

"..... We think that the lower court should have allowed the defendant to get round the technical objection of the absence of a formal application for extension of time."

3. On the other hand, Mr. J. S. Arora, learned senior counsel for the respondents has vehemently opposed this application and submitted that the appellants have not come with bonafide intention in filing the present I.A. as they have not disclosed the proper reason of delay in their initial application (I.A. No 01/ 2023) and the main ground taken by them was completely vague and misleading and then they filed a supplementary affidavit to explain the reasons of delay and cleared the vagueness but even then, there are serious contradictions in between the averments made by the appellants in this I.A. and their supplementary affidavit. Learned senior counsel further submits that though the appellants revealed some reasons in respect of their delay but the same relates only in respect of the period expiring on 17.10.2022 as admittedly, they got certified copy of the judgement impugned on the said date but even then they did not take steps to file the appeal after getting the certified copy of the judgement for more than six months and regarding this long period of delay, no proper



explanation has been given by them and the ground that the appellant No.1 being old aged person had no sufficient money to file this appeal during the relevant period is not believable and acceptable. It is further submitted that it is an established law that the discretion to condone the delay has to be exercised judiciously based on the facts and circumstances of each case and so called sufficient cause cannot be liberally interpreted if negligence, inaction or lack of bonafide is attributed to the party seeking condonation of delay and the conduct, behavior and attitude of such party relating to his/her inaction or negligence are relevant factors to be taken into consideration while deciding his/ her prayer for condonation of delay and in the present matter the conduct of the appellants in filing this appeal did not remain proper rather they remained completely negligent in filing their appeal. In support of these submissions, learned senior counsel has placed reliance upon the following judgements of the Hon'ble Supreme Court passed in the cases of:-

(I) (2012) 5 SCC 157 (Maniben Devraj Sah vs. Municipal Corporation of Brihan Mumbai;

(II) (2013) 12 SCC 649 (Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and



Others;

(III) (2013) 14 SCC 81 (Basawraj & Others vs. Special Land Acquisition Officer.

Relevant paragraphs of these judgements upon which reliance has been placed are being reproduced as under:-

Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157

“23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.



29. Unfortunately, the learned Single Judge of the High Court altogether ignored the gaping holes in the story concocted by the Corporation about misplacement of the paper and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of the judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.

30. In the result, the appeals are allowed. The impugned order is set aside and the appeals filed by the respondent against the judgements of the trial court are dismissed. The parties are left to bear their own costs”.

Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 :

“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 legalise injustice but are obliged to remove injustice.



21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

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.

21.9. (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.

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.

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”.

Basawaraj v. Land Acquisition Officer,



(2013) 14 SCC 81

“7. Shri Patil, learned Senior Counsel, has taken us through a large number of judgments of the High Court wherein delay had been condoned without considering the most relevant factor i.e. “sufficient cause” only on the condition that applicants would be deprived of interest for the delay period. These kinds of judgments cannot be approved. The High Court while passing such unwarranted and uncalled-for orders, failed to appreciate that it was deciding the appeals under the Act and not a writ petition where this kind of order in exceptional circumstances perhaps could be justified.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In



case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

4. Heard both the sides.

5. This court is of the view that the circumstances explained by the appellants in the present application regarding the delay of 187 days having occurred on their part in filing the present appeal are sufficient to condone the said delay. The delay concerned to the period before 17.10.2022 has been properly explained by the appellants in the instant petition. So far as the subsequent period of delay after 17.10.2022 is concerned, though an explanation for the delay of each and every day has not been given but there are two important circumstances appearing from the supplementary affidavit which show that the appellant No.1 who is sad to be *Pairvikar* being an old aged person was suffering from old age ailments during the relevant period of delay, secondly, he belongs to rural area and thirdly, he has taken the plea that during the relevant period the appellants had no sufficient money to file the



appeal and some delay took place in arranging the money. Though, these circumstances are general in nature but, however, the same inspire confidence of this court considering the prevailing situation in the rural areas of this State and it is established law that section 5 of the Limitation Act has been enacted by the Legislature to enable the courts to do substantial justice to the parties by disposing of the matters on merits and refusing to condone the delay can result in meritorious matters being thrown out at the very threshold and cause of justice being defeated and the necessity of the explanation of delay to each and every day does not mean that a pedantic approach should be made. In this regard, the principle laid down by the Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag vs. Mst. Katiji, (1987) 2 SCC 107** is relevant and the same is being reproduced as under:-

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is



adopted on principle as it is realized that:

- 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 condoned 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".*

6. Accordingly, this court is satisfied with the circumstances and reasons shown by the appellants in the present I.A. regarding the delay in filing the instant appeal and the grounds taken by the appellants do not appear to be concocted and fanciful and the appellants were not thoroughly negligent in not filing their appeal within the prescribed limitation period, so, the delay of 187 days having taken place on the part of the appellants in filing this appeal is hereby



condoned and the instant Interlocutory Application stands
allowed.

(Shailendra Singh, J)

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