

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

LPA No. 174/2024 in
RP No. 109/2023

Reserved on : 08.11.2024
Pronounced on: 03.01.2025

- | | |
|---|-----------------|
| 1. Rajinder Singh,
S/O. Late Sh. Teja Singh | ...Appellant(s) |
| 2. Gandharab Singh,
S/O. Late Sh. Teja Singh | |
| 3. Tarsem Singh,
S/O. Late Sh. Pawan Dev Singh | |

All residents of village Sahanu Mandi,
PO Jandrah, Tehsil & District Jammu.

Through: Mr. Sidharath Yadav, Sr. Advocate with Mr. Ayjaz Lone,
Advocate

Vs.

- | | |
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| 1. Abdul Aziz
S/O. Sh. Shukar Khan
R/O. Village, Sahanu Mandi,
PO Jandrah, Tehsil & District Jammu. | ...Respondent(s) |
| 2. J&K Special Tribunal, Jammu,
Through its Registrar, JDA Complex,
Janipur, Jammu. | |
- Through: Mr. Dhiraj Chowdhary, Advocate, for contesting respondent no. 1

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE.

JUDGMENT

Mohd Yousuf Wani -J

01. Impugned in the instant Letters Patent Appeal filed under Clause 12 of the Letters Patent Rules [hereinafter referred to as "LPA" for short] is the Judgment dated 9th July, 2024, passed by the learned Single Bench of this Court while allowing an application for condonation of delay (CM No. 6794/2023) that came to be filed by the contesting respondent (petitioner therein),

namely, Abdul Aziz along with the main petition (109/2023) seeking review of the Order dated 18th May, 2017, passed by this Court in OWP No. 878/2010, while allowing the said petition and setting aside the Order dated 18th February, 2010 of the learned J&K Special Tribunal, Jammu, [hereinafter referred to as the “Tribunal” for short] impugned therein.

02. A brief resume of the facts of the case relevant for disposal of the instant *intra court* appeal deserves a needful mention.

One, Sh. Teja Singh, father of the appellants 1 and 2 and the grandfather of appellant no. 3 allegedly started cultivating a big chunk of land approximately measuring 85 Kanals falling under different khasra numbers and situated at village Sahano Tehsil and District Jammu, in the year 1965, which land was belonging to Noor Khan and Yousaf Khan sons of Uzar Khan and *Aziz Khan son of Shukar Khan* (contesting respondent no. 1/Review petitioner) initially in the capacity as tenant and thereafter as a protected tenant by paying Batai rent to them.

That although right from 1965, the said late Teja Singh was peacefully and uninterruptedly cultivating the aforesaid land, but in the month of Maghar 2027 BK corresponding to November, 1970 AD, he was forcibly dispossessed by the owners of the land.

Sh. Teja Singh then filed an application on 25th March, 1971, before the Deputy Commissioner, Jammu, in terms of Section 56 of the Jammu and Kashmir Tenancy Act, SVT., 1980, [hereinafter referred to as the “Tenancy Act” for short] which

came to be transferred for disposal under law to the Assistant Commissioner, Revenue, Jammu. Assistant Commissioner, Revenue, Jammu, vide his Order dated 27th July, 1973, dismissed the said petition and aggrieved of the same, Sh. Teja Singh preferred an appeal before the learned Divisional Commissioner, Jammu, who vide his Order dated 11th October, 1975, remitted the matter to Assistant Commissioner, Jammu, exercising the powers of Collector, Jammu. The Assistant Commissioner, Revenue, Jammu, (Collector), subsequently allowed the application of Sh. Teja Singh vide Order dated 23rd September, 1994, directing the present contesting respondent to be evicted from the subject land.

The present Respondent no. 1 assailed the Order dated 23rd September, 1994, of the learned Assistant Commissioner, Revenue, Jammu, through the medium of an appeal before the appellate Authority i.e., Director, Land Records, J&K, Jammu, but the same was dismissed vide Order dated 28th August, 2004. Thereafter, the Respondent no. 1 filed a revision petition assailing the Order dated 28th August, 2004, before the learned Tribunal, which allowed the same vide Order dated 18th February, 2010.

The Order dated 18th February, 2010, of the Tribunal came to be assailed by the present appellants through the medium of a writ petition bearing OWP No. 878/2010 under Article 227 of the Constitution of India read with Section 104 of the Jammu and Kashmir Constitution (now rendered infructuous since 5th

August, 2019 vide Presidential Order C.O. 272) in this Court, which was allowed vide Order dated 18th May, 2017. The learned Single Bench of this Court, vide the aforesaid Order dated 18th May, 2017, passed in OWP No. 878/2010, set aside the impugned order passed by the Tribunal dated 18th February, 2010 and upheld the Orders dated 23rd September, 1994 and 28th August, 2004 respectively passed by the Assistant Commissioner, Revenue (Collector), Jammu and Director Land Records, J&K, Jammu, to the effect of the eviction of contesting respondent no. 1 Abdul Aziz from the subject land.

The contesting respondent, Abdul Aziz assailed the Order dated 18th May, 2017, of the learned Single Bench of this Court through the medium of an *intra court* appeal and the learned Division Bench of this Court vide Order dated 24th July, 2017 allowed the appeal and set aside the order passed by the learned Single Bench dated 18th May, 2017. The learned Division Bench, while passing the Order dated 24th July, 2017, in LPA (OW) No. 63/2017 observed that the writ petition filed by the appellants under Section 104 of the J&K Constitution impugning the order of the Special Tribunal before the learned Single Bench was not maintainable and, accordingly, while allowing the *intra court* appeal, set aside the order of the learned Single Bench.

The present appellants assailed the said order of the learned Division Bench dated 24th July, 2017, in SLP before the Hon'ble Supreme Court of India and the Hon'ble Apex Court, vide Order dated 14th February, 2023, while allowing the Civil

Appeal No. 1143 of 2023 arising out of SLP, set aside the order of the learned Division Bench of this Court dated 24th July, 2017. It was observed by the Hon'ble Apex Court in its Order dated 14th February, 2023, that important question appears to have arisen as the High Court by a cryptic reasoning while holding the LPA to be untenable has also held the writ petition to be untenable and dismissed the same. The Hon'ble Apex Court remitted the matter back to this Court for deciding the LPA afresh in accordance with the observation of the Hon'ble Court.

The LPA (OW) No. 63/2017 came up for hearing before this Court in pursuance of the directions of the Hon'ble Supreme Court, but the present contesting respondent no. 1, Abdul Aziz (Appellant therein) withdrew the same with liberty to avail remedy, if any, available under rules.

The contesting respondent no. 1 subsequent to the withdrawal of the LPA, choose to file a review petition (RP No. 109/2023) in respect of the Order dated 18th May, 2017 passed by the learned Single Bench of this Court in OWP No. 878/2010. The said review petition was accompanied with an application for condonation of delay (CM No. 6794/2023) filed in terms of Rule 66 Clause 3 of the Jammu and Kashmir High Court Rules 1999 read with Section 5 of the Limitation Act, 1963. The learned Single Bench of this Court vide Order impugned in this LPA dated 9th July, 2024, allowed the said application and condoned the delay in filing the review petition.

03. The order impugned has been assailed on the grounds that the review petition has been filed with a delay of more than 2400 days i.e., more than 6 ½ years. That the review is being sought of the Judgment of the learned Single Bench of this Court dated 18th May, 2017. That the contesting respondent no. 1, upon being aggrieved of the Judgment dated 18th May, 2017 of the learned Single Bench of this Court, preferred to file an *intra court* appeal before the learned Division Bench of this Court, which came to be decided in his favour, whereupon the appellants preferred a Special Leave Petition before the Hon'ble Supreme Court. That the Hon'ble Supreme Court vide Judgment dated 14th February, 2023, set aside the Judgment of the learned Division Bench of this Court and remitted the matter back to the learned Division Bench for being decided afresh within a period of six months. That pursuant to the directions of the Hon'ble Supreme Court, the LPA came to be listed before the learned Division Bench on 9th June, 2023, 25th August, 2023, 6th September, 2023, and 18th October, 2023, but the respondent did not pursue the same and instead sought withdrawal of the same on 6th November, 2023, whereafter he filed the review petition on 20th October, 2023 in respect of an Order dated 18th May, 2017. That the respondent no. 1, who had to justify each day's delay, even did not bother to mention the number of the days of delay in filing the review petition. That the contention of the respondent no. 1 to the effect that he learnt about the Judgment dated 14th February, 2023 of the Hon'ble Supreme Court in June, 2023, is not fair and honest,

because he had duly appointed and was being represented by a learned counsel in the matter before the Hon'ble Supreme Court. That the review petition ought to have been filed by the respondent no. 1 within a period of 30 days of the Judgment of the learned Division Bench of this Court i.e., by 24th August, 2017. That respondent could not have been given benefit of the provisions of Section 5 of the Limitation Act, because as per the Article 126 of the said Act, a review petition in respect of a judgment of a court other than the Hon'ble Supreme Court is to be filed within a period of 30 days, as against which the review petition in question was preferred after more than 2400 days i.e., more than 6 ½ years. That the Hon'ble Apex Court in a catena of Judgments has laid down that each day's delay has to be explained by an applicant seeking condonation of delay. That appellants have been forced in the litigation some 50 years back when their predecessor, Sh. Teja Singh was trespassed and dispossessed by the original petitioners/owners. That although seven persons initially claimed to be the owners of the subject land, yet after passing of the eviction order by the Collector Agrarian Reforms, Jammu, on 23rd September, 1994 in favour of the appellants, the remaining persons except the respondent no. 1 withdrew the contest. That the respondent no. 1 is not holding any power of attorney on behalf of the remaining land owners and he asserts his ownership title only in respect of 21 Kanals out of total quantam of land measuring more than 85 Kanals. That the respondent (review petitioner) made an unfair and illegal

effort to justify the filing of grossly and inordinately delayed review petition by attributing the delay to the incorrect legal advice of his learned counsel, which conduct needs to be strongly deprecated. That the “doctrine of finality” in litigation, shall be left meaningless in case huge and inordinate delay is condoned. That the learned Single Bench of this Court fell in error in observing and concluding that the cause of action to file the review petition accrued to the respondent no. 1 only upon passing of the Judgment dated 14th February, 2023 by the Hon’ble Supreme Court, when in fact the review has been sought in respect of the Judgment dated 18th May, 2017 passed in OWP No. 878/2010. That the respondent no. 1 has utterly failed to assign any sufficient cause for condoning the delay which was in excess of 2400 days. That it also escaped the attention of the learned Single Bench while passing the impugned order that an applicant seeking condonation of delay has to justify and explain each day’s delay. That the liberal approach adopted by the learned Single Bench while passing the impugned order was totally unjustified in the facts and circumstances of the case. That the learned Single Bench has erred in observing that the period of limitation in the case shall commence from the date when the Hon’ble Supreme Court set aside the order passed by the learned Division Bench. That without prejudice to the stand of the appellants (respondents in review petition), again inordinate delay has been occasioned in filing the review petition after passing of the Order dated 14th February, 2023 by the Hon’ble

Supreme Court. That the learned Single Bench did not appreciate the case law relied upon by the appellants and condoned the huge delay unjustifiably.

04. We have heard the learned counsel for the contesting parties.

05. Mr Sidharath Yadav, learned senior Advocate, appearing for the appellants, while reiterating the stand already taken in the memo of appeal, very vehemently contended that the order impugned dated 9th July, 2024, passed by the learned Single Bench of this Court while allowing the condonation of delay application in relation to the review petition, suffers from patent illegality and perversity. He contended that a huge and inordinate delay of more than 2400 days equivalent to 6 ½ years has been condoned without any plausible cause and justification. He contended that condoning of inordinate delay of more than six and half years by according overdue liberal construction to the expression “*sufficient cause*” occurring in the provisions of Section 5 of the Limitation Act has caused miscarriage of justice, rendered the provisions of Limitation Act prescribing time limit for preferring different claims as meaningless and has also undone the legal rights accrued to the appellants. The learned senior counsel submitted that it is well settled by a catena of judgments of the Hon’ble Supreme Apex Court that an applicant seeking condonation of delay has to explain each days delay through sufficient cause and a lackadaisical approach should not be condoned to the prejudice of the other party.

06. The learned senior counsel, while placing reliance on the authoritative Judgment cited as *Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai* (2012) 5 SCC 157, submitted that the liberal construction of expression “*sufficient cause*” does not allow to condone total lethargy or utter negligence so as to cause prejudice to the valuable rights of the other side and to render the provisions of the Limitation Act meaningless. He contended that the idea underlying the concept of limitation is that other remedy should remain alive only till the expiry of the period fixed by the Legislature.

Again, while placing reliance on the other authoritative Judgment of the Hon’ble Supreme Court cited as *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others* (2013) 12 SCC 649, the learned senior counsel contended that a distinction needs to be drawn between a case where the delay is inordinate and a case where the delay is of few days. That in the former case, the consideration of prejudice to the other side will be a relevant factor and in the later case no such consideration arises. He contended that it has been, *inter alia*, held in the case that what needs to be emphasized 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 cannot 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.

The learned senior counsel again, while placing reliance on the Judgment of the Hon'ble Madras High Court passed in case titled *P.K.Ramakrishnan Vs. The Tamil Nadu Electricity Board* 1992-2 L.W., contended that the allegations of negligence on the part of the counsel in communicating to the party being not precise and definite, cannot be accepted and where the litigant himself is *prima facie* in default, negligence of counsel cannot come to his aid and the delay cannot be condoned.

The learned senior counsel further on the support of the authoritative Judgment cited as *Ajaz Bajpai Vs. Union of India* (2015) SCC Online Del. 6573, contended that a court has no power to extend the period of limitation on equitable grounds. 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 party's own inaction, negligence or laches.

- 07.** The learned senior counsel very vehemently contended that the learned Single Bench, while allowing the condonation of delay application, has erred in observing and concluding that the cause of action accrued to the contesting respondent no. 1 to file the review petition after the Judgment of the Hon'ble Supreme Court dated 14th February, 2023. He further contended that although the limitation period of 30 days for filing the review petition runs

from the date of the order of the learned Single Bench dated 18th May, 2017 sought to be reviewed, yet without prejudice to his said contention, it is discernable that the contesting respondent no. 1 has even remained in deep slumber from the passing of the order dated 14th February, 2023 by the Hon'ble Apex Court till filing the review petition on 20th October, 2023. He, accordingly, prayed for setting aside of the impugned order dated 9th July, 2024 and consequent dismissal of the review petition.

08. *Per contra*, the learned counsel for the contesting respondent no. 1, Mr. Dhiraj Chowdhary, Advocate contended that the Judgment impugned dated 9th July, 2024, of the learned Single Bench of this Court allowing the condonation of delay in filing his review petition in respect of the Order dated 18th May, 2017, passed in OWP No. 878/2010 does not suffer from any illegality or incorrectness. Learned counsel contended that the application for condonation of delay giving rise to the impugned order was filed by the contesting respondent no. 1 in terms of provisions of Rule 66 (3) of the Jammu and Kashmir High Court Rules 1999, read with Section 5 of the Limitation Act, 1963. He contended that the contesting respondent no. 1 is an old man of 75 years of age suffering from multiple age related ailments, who, learnt about the Judgment dated 14th February, 2023, of the Hon'ble Supreme Court after some months on 4th June, 2023 through some of his relative/friend and he had no contact with any lawyer in the Hon'ble Supreme Court and some counsel for contesting his case was engaged by his previous counsel. Learned counsel

submitted that respondent no.1 after passing of the Judgment dated 14th February, 2023, by the Hon'ble Supreme Court sought legal opinion from so many Advocates and, as a result of the same, decided to withdraw the LPA and to prefer the review petition against the Judgment dated 18th May, 2017 of the learned Single Bench of this Court. He contended that no delay in filing the review petition was occasioned by the respondent no. 1 as some time was reasonably spent by him for seeking legal guidance and getting the review petition drafted, after the passing of the Judgment of the Hon'ble Supreme Court. The learned counsel submitted that after passing of the Judgment dated 18th May, 2017, by the learned Single Bench of this Court in OWP No. 878/2010, he assailed the same before the learned Division Bench of this Court through LPA, being aggrieved of the same and upon disposal of the LPA by the learned Division Bench on 24th July, 2017, the present appellants preferred a Special Leave Petition against the same before the Hon'ble Supreme Court. The Hon'ble Supreme Court with some observations set aside the order of the learned Division Bench and remitted the matter back to this Court for deciding the LPA afresh in accordance with its observations. Learned counsel further contended that the merits of the case were not touched either by the learned Division Bench of this Court or by the Hon'ble Supreme Court and, as such, the contesting respondent upon seeking the legal guidance preferred to withdraw the LPA and to file the review petition in respect of the Judgment dated 18th May, 2017 of the learned

Single Bench of this Court for vindication of his rights as regards the subject matter. The learned counsel submitted that, the contesting respondent no. 1 did not commit any intentional or deliberate delay in filing the review petition. He further submitted that the contesting respondent no. 1 very diligently contested the matter up to the level of the Hon'ble Apex Court without showing any lackadaisical approach. He contended that the Judgment of the learned Division Bench of this Court dated 24th July, 2017 went in favour of the respondent no. 1, but the order passed by the Hon'ble Supreme Court dated 14th February, 2023, remitting the matter back to the learned Division Bench for deciding afresh in accordance with its observations, gave the cause of action to the respondent no. 1 to prefer a review petition after choosing to withdrawing the LPA. The learned counsel in support of his contentions placed reliance on the authoritative Judgment of the Hon'ble Supreme Court cited as *Collector, Hooghly and Ors. vs. Nirmal Sarkar (D) by Lrs. And Ors* 2008 (II) OLR (SC)-415 and *Meerut Kendriya Thok Upbhokta Shakari Bandar vs. Vakil Chand Jain* (2017) AIR (SC) 2159. The learned counsel, accordingly, prayed for dismissal of the LPA.

- 09.** We have perused the record of the instant appeal, especially, the copies of the impugned Judgment dated 9th July, 2024, Judgment dated 18th May, 2017, sought to be reviewed, Judgment dated 24th July, 2017 passed in LPA (OW) No. 63/2017 and the Judgment dated 14th February, 2023 of the Hon'ble Apex Court.

10. We have also given our thoughtful consideration to the rival arguments advanced on both the sides.
11. The contesting respondent no. 1 appears to have filed the review petition in terms of the provisions of the Rule 66 of the Jammu and Kashmir High Court Rules 1999 read with the provisions of Order XLVII of the Code of Civil procedure. Since the review petition is reported to have been filed before this Court on 20th October, 2024, admittedly, beyond the period of limitation, which is 30 days from the date of passing of the Judgment/Order sought to be reviewed, as such, the application for condonation of delay in terms of provisions of Section 5 of the Limitation Act came to be filed along with main review petition. It is profitable to reproduce Section 5 of the Limitation Act for ready reference.

“Section 5, Extension of prescribed period in certain cases.

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

12. Assignment of a, “**sufficient cause**” is *sine qua non* for seeking condonation of delay in filing any appeal or an application, which for advancement of substantial justice shall receive a liberal interpretation. According a liberal interpretation to a cause advanced for condoning delay is indeed in the discretion of the court which needs to be exercised with great care and caution so that an ascertainment is made of the probable bona- fides of applicant striving for vindication of his legal rights or otherwise

of his mala-fides arising from his gross negligence and carelessness likely to cause prejudice and hardship to the other party in the litigation having obtained some legal right with the passage of time. Liberal interpretation of the “*sufficient cause*” to a large extent depends on the facts and circumstances of the case. Clause (3) of the Rule 66 of the Jammu and Kashmir High Court Rules, 1999 also provides for condonation of delay specifically for a review petition upon assigning of sufficient cause by the review petitioner for not preferring the same within stipulated period of 30 days. Article 124 of the Schedule appended to the Limitation Act also prescribes a period of 30 days for filing a review petition in respect of a Judgment by a court other than the Supreme Court. It has been authoritatively held by the Hon’ble Supreme Court in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai* (2012) 5 SCC 157, also relied upon by learned counsel for the appellants that “ *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.*”

13. The observations made by the Hon'ble Supreme Court in *Collector (LA) vs. Katiji* (1987) 2 SCC 107, while making a significant departure from its earlier Judgments, at para-3 of its Judgment deserve a needful mention.

“3, 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 meaning- full 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:-

- i. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- ii. 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.*
- iii. "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.*
- iv. 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.

- v. *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.*
- vi. *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.”*

14. After passing of the Judgment in case *Collector Land Acquisition vs. Mst. Katiji* (1987) 2 SCC 107, wherein some guiding principles were formulated for consideration of an application for condonation of delay, the Hon’ble Apex Court subsequently in some cases including *B.Madhuri Goud Vs. B.Damodar Reddy* (2012) 12 SCC 693 and *Esha Battarcharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others* (2013) 12 SCC 649, reformulated guiding principles which shall weigh in the minds of the courts while considering the applications for condonation of delay. The said principles are reproduced hereunder for the sake of convenience.

- (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.*
- (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 encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (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.*
- (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 the 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 half hazard 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 a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-chalant manner requires to be curbed, of course, within legal parameters.”*

15. We are of the opinion that it is the sufficiency of the cause assigned for condoning the delay which is more material than the length of the delay having occasioned in filing the cause.
16. The observations made by the Hon'ble Supreme Court in *Mool Chandra Vs. Union of India and Another* (2024) SCC Online SC 1878 decided on August, 05, 2024, at para-20 of its Judgment deserve a needful mention.

“20. No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded, will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.”

17. In *Basawaraj Vs. Special Land Acquisition Officer AIR 2014 SC 746*, decided on 22nd August, 2013, the Hon'ble Supreme Court has held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression “*sufficient cause*” as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of

the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds. It would be beneficial to reproduce the paras 12 and 15 of the aforesaid Judgment.

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

15. 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 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.”

18. The Hon'ble Apex Court in *Pathapati Subba Reddy Vs. Special Deputy Collector (LA)* 2024 SCC Online SC 513 decided on April 08, 2024, laid down some principles for consideration of an application for condonation of delay. It would be profitable to reproduce the para-26 of the aforesaid Judgment.

- “i. Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- ii. A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- iii. The provisions of Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- iv. In order to advance substantial justice, though liberal approach, justice- oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act.*
- v. Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- vi. Merely some persons obtained relief in similar matter; it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;*

- vii. *Merits of the case are not required to be considered in condoning the delay; and*
- viii. *Delay condonation application has be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

19. It is also felt appropriate to reproduce the law laid down by the Hon’ble Supreme Court in *Delhi Development Authority vs. Tejpal and Ors.* (2024) 7 Supreme Court Cases 433 at paras 25 to 28 of its Judgment.

“25. As is clear from a plain reading of Section 5 of the Limitation Act, there are exceptions to this general rule. The statute allows for admitting an action provided “sufficient cause” is shown. This vests courts with the discretion to extend the period of limitation if the applicant can show that he had sufficient cause for not preferring an appeal or application within the prescribed period. Section 5 requires analysis of two ingredients: first, an examination of whether “sufficient cause” has been made out; and second, whether such cause has been shown for not filing the appeal/application “within the prescribed period”.

26. As regards the first ingredient, the Limitation Act itself does not provide more guidance on what its constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.

27. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant. Although the actual period

of delay might be instructive, it is the explanation for the delay which would be the decisive factor.

28. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritized over technicalities, as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary – despite it appearing liberal or magnanimous. The expression ‘sufficient cause’ should be given liberal construction so as to advance substantial justice. ”

20. Admittedly, the contesting respondent (review petitioner) did not opt to prefer the review petition immediately after passing of the Judgment dated 18th May, 2017, of the learned Single Bench of this Court sought to be reviewed and instead he preferred LPA before the learned Division Bench of this Court which was decided in his favour. Aggrieved by the Order dated 24th July, 2017, of the learned Division Bench of this Court, the present appellants preferred an SLP before the Hon’ble Supreme Court which was granted and the consequent Civil Appeal No. 1143/2023 came to be allowed with the quashment and setting aside of the order of the learned Division Bench dated 24th July, 2017. The Hon’ble Apex Court, however, remitted the matter back to this Court for deciding the LPA afresh in accordance with the observations of the Hon’ble Court. A party may sometimes under a legal guidance prefer to assail the Order/Judgment, of which, he is aggrieved, through the medium of an appeal instead of seeking the review of the same. Without even imagining, the touching of merits of the case, it is felt safe

to mention that the learned Single Bench of this Court through the Order dated 18th May, 2017, sought to be reviewed only deliberated upon technicalities to the effect that the learned Special Tribunal could have exercised the jurisdiction in case of involvement of a substantial question of law or of public importance, which, (Tribunal), instead returned a finding to the effect, that Collector Agrarian Reforms (ACR) was not competent to pass the order dated 23rd September, 1994.

The learned Division Bench of this Court also, while disposing of the LPA, vide Order dated 24th July, 2017, deliberated upon a technicality and observed that power under Section 104 of the Constitution of Jammu and Kashmir does not extend to the orders passed by the Jammu and Kashmir Special Tribunal. However, the Hon'ble Supreme Court, while disposing of the Civil Appeal No. 1143/2023 was pleased to, *inter alia*, observe that the issue deliberated upon by this Court in the LPA to the effect of the maintainability of a petition under Section 104 of the erstwhile Jammu and Kashmir Constitution filed in respect of the orders passed by the Special Tribunal, has wider ramifications, on account of which reason, it will be appropriate that this Court reconsiders the issue in the light of the various Judgments cited by both the parties. The Hon'ble Supreme Court allowed the appeal and set aside the order of this Court passed in LPA, remitting the matter back to this Court for deciding afresh. So we are of the view that the actual merits of the case i.e., determination of the respective rights of the parties in the light of

the fact legal scenario of the case were not adjudicated in the litigation starting from the Special Tribunal Jammu. We hesitate to mention that merit is involved in the dispute between the parties in the light of fact legal scenario governing the field of dispute.

21. The perusal of the record reveals that the contesting respondent has not slept over the matter after passing of the Judgment dated 18th May, 2017, sought to be reviewed. He vigorously pursued his case by filing LPA and thereafter contesting SLP. It is the contention of the respondent/review petitioner that after passing of the order by the Hon'ble Supreme Court, he under legal guidance decided to withdraw the LPA and to prefer a review against the aforementioned Judgment dated 18th May, 2017 of the learned Single Bench.
22. Thus, under these circumstances, there appears a reason to believe that the contesting respondent/review petitioner bonafidly conceived to prefer the review petition. He, as such, is supposed to have a sufficient cause to prefer the review petition, notwithstanding the length of the time.
23. We are of the view that the underlying principles evolved by the Hon'ble Supreme Court from time to time and especially in cases titled *Collector Land Acquisition vs. Mst. Katiji*, and *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors*, cited supra, for consideration of an application seeking condonation of delay, in the facts and circumstances of this case justify the condonation of delay.

24. As hereinbefore mentioned, the Hon'ble Supreme Court in *Mool Chandra Vs. Union of India and Anr* decided on August 05, 2024, has, *inter alia*, observed “no *litigants stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, but the cause propounded.*
25. It is also needful to mention that, we may not be misunderstood to observe that the expression “*sufficient cause*” needs an unqualified liberal interpretation so as to render the provisions of the Limitation Act meaningless. Rules of limitation are not meant to destroy the rights 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. The object underlying law of limitation is based on the maxim “*interest reipublicae up sit finis litium*” meaning that it is for the general welfare that a period be put to litigation. A long passage of time alone is not enough to turn down the plea of an applicant and 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 litigant. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should be hesitant to accept the explanation. While condoning the delay, the Court has not to forget the other side.

26. In the backdrop of the aforementioned discussion, we in the facts and circumstances of this case find no illegality or perversity with the order impugned. The instant Letters Patent Appeal, as such, is dismissed.

(Mohd. Yousuf Wani)
Judge

(Sanjeev Kumar)
Judge

JAMMU:
03.01.2025
“*Shamim Dar*”

Whether the Judgment is reportable? Yes/No