IN THE COURT OF MS. GEETANJLI GOEL, ASJ/SPL. JUDGE (PC ACT) (CBI)-24
ROUSE AVENUE DISTRICT COURTS, NEW DELHI

Criminal Revision No.04/2020
CIS No.32/2020
CNR No.DLCT11-000214-2020

In the matter of:

Zee Media Corporation Ltd.
A Company registered under the
Companies Act, 1956
Having its Corporate Office at
4, Bhagwan Dass Road
New Delhi – 110001
Through its Authorized Representative
Shri Vishal Pandey

…..... Revisionist/ Petitioner

versus

1. State
Through Standing Counsel

2. Ms. Mahua Moitra
D/o Dwipendra Lal Moitra
R/o Bangla Bhawan
3, Hailey Road
New Delhi- 110001

…..... Respondents

Date of institution of revision	**:**	**28.08.2020**
Date received by transfer	**:**	**20.10.2020**
Date on which order reserved	**:**	**19.11.2020**
Date of order	**:**	**03.12.2020**

O R D E R

1. Vide this order, I shall dispose of the application under Section 5 of the Limitation Act, 1963 filed on behalf of the petitioner seeking condonation of delay in filing the revision petition. It is stated that the revision petition has been filed challenging the order dated 25.09.2020 passed by the Ld. ACMM, Rouse Avenue District Courts, New Delhi in relation to the complaint case No.50/2019 titled as Zee Media Corporation Ltd. v. Ms. Mahua Moitra under Section 499 and 500 IPC against the accused/ respondent No.2 seeking her prosecution for deliberately and willfully having committed the offence of defamation against the complainant company/petitioner.

2. It is averred that the Authorized Representative of the complainant company/ petitioner had only read the short order that the accused/ respondent No.2 had been summoned and had not read the detailed order. However, during the COVID times, the Authorized Representative obtained the detailed summoning order and after going through the same, found out that the Court had not summoned the accused/ respondent No.2 on defamatory words said by the accused/ respondent No.2 i.e. "*aap log itne* ***uneducated*** *aur* ***budwak*** *hai*", which were also defamatory. Upon the same, the Authorized Representative of the complainant company/ petitioner took legal advice as

to whether an unfavourable portion in a favourable order could be challenged before the Court, and upon getting the legal advice, had instructed for filing of the revision petition. It is averred that due to the said circumstances the revision petition could not be filed within time and the delay of 81 days in filing the revision petition was bonafide and irreparable harm would be caused if the delay was not condoned. It is thus prayed that the delay of 81 days in filing the revision petition be condoned.

3. Notice of the application was given to the respondents and reply was filed on behalf of the respondent No.2 to the application seeking condonation of delay averring that vide order dated 08.09.2020, observing the inordinate delay of 81 days in filing the revision petition, the court issued notice to the respondent No.2 only on the application for condonation of delay. It is averred that there was inordinate and willful delay on the part of the petitioner who had participated actively in the proceedings in the Ld. Trial Court after passing of the impugned order dated 25.09.2019 (wrongly mentioned in the application for condonation of delay as 25.09.2020). It is submitted that the application for condonation of delay is without merits as the delay of 81 days in filing the petition was wholly unexplained, and even otherwise it would appear that the delay in filing the petition was in fact more than 200 days. The application did not explain the delay (let alone every days' delay, as is settled law), nor the application provided a believable reason for delay having been occasioned. It is submitted that the delay mentioned in the

application i.e. 81 days appeared to be on the basis of the calculation that was at best a mathematical error, and may be viewed as a deliberate misrepresentation. 90 days from the passing of the impugned order dated 25.09.2019 would expire on 24.12.2019 and the revision petition though dated 11.08.2020 appeared to have been filed on 27.08.2020, as per the website of the Rouse Avenue District Court, New Delhi. Hence, assuming 27.8.2020 as the date of filing the revision petition, the delay was of 247 days and the delay could only be attributed to the negligence on the part of the petitioner, the Authorized Representative and the Counsel for the petitioner. It is submitted that as per the law established by the Hon'ble Supreme Court of India, such negligence was not a sufficient cause to condone the delay. Hence, the revision petition was barred by limitation.

4. It is averred that the revision petition is an after-thought in as much as the same had been filed only after the respondent No.2 had preferred a petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure 1973, challenging the impugned summoning order dated 25.09.2019 as well as the order dated 10.01.2020 by way of which the Ld. ACMM, Special MPs/MLAs Court, Rouse Avenue District Courts, was pleased to frame notice on the respondent No.2 in Ct. Case No.50/2019 titled as Zee Media Corporation Ltd. Vs. Mahua Moitra. A significant ground on which the order summoning the respondent No.2 as also the order framing

notice on the respondent No.2 was challenged was that the Ld. Trial Court ought not to have held that the respondent No.2 was liable for defamation for purportedly using the word "chor", while simultaneously not summoning the respondent No.2 for purported use of the word "budbak" or "uneducated". Further, the petitioner was at all times aware of the contents of the impugned order and the extent to which the statement of the respondent No.2 had been considered as defamatory by the Ld. Trial Court, as the petitioner was even present in the Court on multiple occasions, including for the purpose of cross-examination/adopting the pre-summoning evidence which was impermissible in law.

5. Certain preliminary objections were taken and it was submitted that the contentions raised by the petitioner in the application were patently erroneous, misconceived, devoid of bonafides and therefore, the application as well as the revision petition deserved to be rejected. It is submitted that the respondent No.2 had delivered her maiden speech on the floor of the Parliament on 25.6.2019 and Zee News, a news channel run by the petitioner broadcast/ ran a defamatory campaign on its prime time show, where, in an attempt to malign the public image of the respondent No.2, Shri Sudhir Chaudhary, a news presenter accused the respondent No.2 of lying on the floor of the Parliament, misleading the citizens of India, and plagiarizing the maiden speech from an article of one Mr. Martin Longman published in the Washington Monthly. It is

averred that the respondent No.2 filed a criminal complaint case on 09.07.2019 for defamation against Shri Sudhir Chaudhary and cognizance was taken and on 4.11.2019, Shri Sudhir Chaudhary was summoned. As an afterthought and counter blast to the said defamation complaint, the petitioner had filed the present criminal complaint under Sections 499 and 500 IPC against the respondent No.2 for use of certain words by the respondent No.2 against the petitioner while addressing the media personnel on 03.07.2019 in the premises of the Parliament.

6. It is submitted that vide order dated 25.09.2019 the respondent No.2 was summoned only to the extent of using the words “paid news”, “thief/ chor” and on 25.10.2019 the respondent No.2 entered appearance through Counsel despite non-service of summons and the respondent No.2 sought to address arguments on discharge. On 10.01.2020 after hearing the Counsels for the petitioner and the respondent No.2, notice was framed against the respondent No.2. It is averred that while an application under Section 91 Cr.P.C. filed by the respondent No.2 was pending before the Ld. Trial Court, the respondent No.2 by way of writ petition under Article 226 of the Constitution read with Section 482 Cr.P.C. approached the Hon’ble High Court of Delhi challenging the summoning order dated 25.09.2019 and the order framing notice dated 10.01.2020.

7. It is submitted that the present revision petition is barred by limitation in as much as there is an inexplicable delay of 81 days, as stated in the application and over 240

days in reality in filing the petition and the petitioner had failed to give any sufficient cause for the delay to be condoned. Reliance is placed on the judgment of the Hon'ble Supreme Court of India in **Esha Bhattacharjee** v. **Managing Committee of Raghunathpur Nafar Academy and Ors.** (2013) 12 SCC 649 and it is submitted that the explanation for delay in the present case did not indicate any cogent reason for delay and provided a justification that was wholly unbelievable. It is averred that the application for condonation of delay clearly indicates towards the negligent conduct and deliberate inaction on the part of the petitioner/ Authorized Representative, and as such, allowing the application would only put the respondent No.2 in further hardships in a malafide defamation complaint. Reliance is placed on the judgement of the Hon'ble High Court of Delhi in **Mitender Pal Solanki** v. **Surender Singh and Ors.** RFA 861/2016 decided on 20.12.2017***;*** of the Hon'ble Supreme Court of India in **Postmaster General** v. **Living India Ltd.** (2012) 3 SCC 563 and in **State of Madhya Pradesh** v. **Bherulal** SLP (C) Diary No.9217/2020 decided on 15.10.2020. It is submitted that the reason stated by the petitioner for the delay in filing the petition cannot be considered to be a sufficient cause and at best can only be described as gross negligence on the part of the petitioner.

8. It is submitted that the petition is an afterthought to the Writ Petition No.1186/2020 preferred by the respondent No.2 challenging the impugned summoning

order and the order framing notice dated 10.01.2020 and the respondent No.2 in the writ petition had raised a ground for setting aside of the summoning order and the order framing notice on the basis of the observations of the Ld. ACMM that the words "uneducated" and "*budbak* were not defamatory. It is submitted that the present petition, in disguise, is an attempt of the petitioner to render the grounds raised by the respondent No.2 before the Hon'ble High Court of Delhi infructuous and the petitioner after deliberate inaction cannot be allowed to re-agitate an issue that forms part of the pleadings of the respondent No.2 before the Hon'ble High Court. It is submitted that the petitioner was at all times aware of the contents of the impugned summoning order in entirety and it was in the knowledge of the petitioner that the Ld. ACMM had not summoned the respondent No.2 for use of certain words such as "uneducated" or "*budbak*" as the same were not found to be defamatory. It is stated that since the day of the passing of the impugned order on 25.09.2020, the complaint case had been listed on eight (8) dates excluding the three dates when the matter was adjourned due to Covid-19 Lockdown. The Ld. Counsel for the petitioner as well as the Authorized Representative of the petitioner had entered appearances as well as made submissions during the course of hearings and as such they had sufficient opportunity on multiple occasions to have perused the impugned order. It is further stated that the e-copy of the impugned order was always available on the website of the Ld. Trial Court and said order was also reported in the Media and it was upon such media reportage that the

respondent No.2 entered appearance despite non-service of summons. Hence, it could not be the case that the petitioner did not have access to the impugned order.

9. It is averred that the application seeking condonation of delay is devoid of bonafides in as much as the delay is the result of negligence of the petitioner and its disinterest to diligently pursue the case and is only an afterthought and a tool for the petitioner to cause inconvenience and harassment to the respondent No.2 and for the petitioner to (post-facto the challenge of the respondent No.2 to the summoning order before the Hon'ble High Court) claim to have also challenged the non-summoning of the respondent No.2 for the purported utterance of the words "uneducated" and "*budbak*". It is thus prayed that the application for condonation of delay be rejected.

10. Rejoinder was filed on behalf of the petitioner to the reply filed by the respondent No.2 to the application for condonation of delay submitting that the petitioner had wrongly mentioned 25.09.2020 instead of 25.09.2019, which was a typographical error on the part of the petitioner. Preliminary submissions were made that the petition was filed on 27.08.2020 against the order dated 25.09.2019 passed by the Ld. ACMM and the application for condonation of delay was filed as there was delay of 81 days in filing of the revision petition. It is submitted that the calculation of 81 days as mentioned by the respondent No.2 as deliberate misrepresentation was not true as 81 days had been correctly calculated by the petitioner and reliance is placed on

the judgment of the Hon'ble Supreme Court of India in **Cognizance For Extension of Limitation** Suo Motu Writ Petition (Civil) No (s). 3/2020. It is submitted that the Hon'ble Supreme Court of India had extended the period of limitation w.e.f. 15.03.2020 vide order dated 23.03.2020 and the said order was binding on this Court and the said order had not been revoked yet. It is averred that the period of limitation for filing of appeal was 90 days and in the present case, the same was till 24.12.2019 as the impugned order was dated 25.09.2019. Further, as per the order of Hon'ble Supreme Court the limitation stood extended from 15.03.2020 so the delay would only be calculated till 15.03.2020 and not till 27.08.2020 and hence there was delay only of 81 days and not of 247 days as misrepresented by the respondent No.2.

11. It is averred that it was clearly stated in the application filed by the petitioner that during lockdown due to Covid-19, the Authorized Representative of the Company obtained the detailed order and after going through the same, found that the Court had not summoned the accused on the defamatory words said by the accused/ respondent No.2 i.e. "uneducated aur "*budbak hai*" which were also defamatory in nature. It is averred that as per the settled law, a litigant should not be shut out at the threshold and be deprived of the opportunity to be heard on merits. Reliance is placed on the judgment of the Hon'ble High Court of Delhi in **New Okhla Industrial Development Authority** v. **Km Paramjit** 2012 (1) ILR (Del) 617; of the Hon'ble Supreme Court in **State of**

Nagaland v. **Lipok Ao & Ors** 2005 (3) SCC 752; and of the Hon'ble High Court of Delhi in **M/s. Kodak India Pvt. Ltd.** v. **State & Ors.** 2009 (1) JCC 671. It is submitted that the Court while dealing with the application for condonation of delay has to even look at the merits of the matter and meritorious matter should not be dismissed on the ground of limitation and reliance is placed on the judgement of the Hon'ble High Court of Delhi in **Delhi Development Authority** v. **RS Jindal and Anr.** 2007 (99) DRJ 90**.**

12. It is averred that the respondent No.2 had challenged the order dated 25.09.2019 which had also been challenged by the petitioner by way of the present revision petition by way of Writ Petition under Article 226 read with Section 482 Cr.P.C. on 04.08.2019 to escape the time bar/ limitation of the order which itself was not maintainable and reliance is placed on the judgement of the Hon'ble High Court of Delhi in **A.K. Dixit** v. **Manoj Kumar & Ors.** 1991 (1) JCC (Delhi) 181. It is submitted that the delay was of 81 days and not of 240 days as contended by the respondent No.2. Moreover, the delay was not malafide but was bonafide on behalf of petitioner. It is averred that there are a catena of judgements in which the Hon'ble Supreme Court and the Hon'ble High Court of Delhi have held that the words "sufficient cause" appearing in Section 5 of the Limitation Act have to be construed liberally so as to advance substantial justice to the parties and a litigant should not be shut out at the threshold and be deprived of the opportunity to be heard on merits. It is averred that the respondent No.2 had contended

that the delay had not been explained by the petitioner but it had been held by the Hon'ble Supreme Court in **State of Nagaland** v. **Lipok Ao (supra)** that the Courts need to adopt a pragmatic and justice oriented approach rather than technical detection of sufficient cause for every day's delay and the Hon'ble High Court of Delhi in **M/s Kodak India Pvt. Ltd. (supra)** had held that even if there was no explanation for each day's delay, the Court would not refuse to examine the case on merits. It is submitted that the revision petition filed by the petitioner is a meritorious matter and the petitioner should be given an opportunity to be heard on merits and the application for condonation of delay ought to be allowed and the bonafide delay ought to be condoned.

13. I have heard Shri Vijay Aggarwal along with Shri Yugant Sharma and Ms. Samprikta Ghosal, Ld. Counsels for the Petitioner, Shri Manoj Garg, Ld. Addl. PP for the State – respondent No.1 and Shri Vikas Pahwa, Ld. Senior Advocate for respondent No.2 along with Shri Adit S. Pujari, Mr. Chaitanya Sundriyal, Shri Syed Arham Masud and Ms. Raavi Sharma, Ld. Counsels through CISCO Webex and have perused the record including the Trial Court Record.

14. The Ld. Counsel for the petitioner had argued that the Ld. ACMM had summoned the accused/ respondent No.2 on the basis of the complaint for defamation filed by the petitioner. The petitioner had duly filed the process and the accused/ respondent No.2 had also appeared. Later the Authorized Representative of the

petitioner found that the Ld. Trial Court had accepted some allegations made in the complaint and summoned the accused/ respondent No.2 in respect of those allegations but rejected some of the allegations which came to knowledge later on. It was submitted that there was a lapse on the part of the Authorized Representative who did not peruse the detailed order but once it came to knowledge that certain allegations had been rejected, the revision petition was filed. Along with the revision petition, the present application for condonation of delay was filed and the reason for the delay was honestly stated in the application instead of taking any frivolous plea. It was argued that there was a delay of 81 days in filing the revision petition. The Ld. Court had issued notice only on the application for condonation of delay as if there is delay on part of a litigant, certain indefeasible rights accrue in favour of the other side which had a right to be heard before the delay was condoned. It was submitted that in the reply, the accused/ respondent No.2 had taken the stand that there was a delay of 247 days in filing the revision petition and not of 81 days but that was because, they had calculated the days of April, May, June and July, 2020 as well when the limitation stood extended on account of the COVID-19 pandemic.

15. The Ld. Counsel for the petitioner further argued that there was no negligence on the part of the petitioner as the impugned order was not adverse to the petitioner and the petitioner was under the impression that the accused/ respondent No.2 had been

summoned and the petitioner did not realize that the impugned order needed to be challenged as certain contentions were rejected vide the impugned order. It was contended that due to the COVID-19 pandemic, the limitation stood frozen so there was a delay of only 81 days in filing the revision petition. It was submitted that the words 'sufficient cause' had to be construed liberally and the court was not to take a hyper-technical view as per the settled law; the court had to be liberal for advancing substantial justice and a litigant could not be shut out at the threshold. It was argued that the said principle applied even more in the present case as it was not a case that grave prejudice would be caused to the accused/ respondent No.2 as she had already been summoned by the Ld. Trial Court and it did not matter if the accused/ respondent No.2 had to defend on one or two points and in fact even during trial, there could be modification of the order framing charge and charge could be added and as such the accused/ respondent No.2 had to appear and contest the case anyway. It was submitted that there was no right which had accrued in favour of the other side and no prejudice would be caused even if the application and eventually the petition was allowed and no additional cost or problem was involved.

16. The Ld. Counsel for the petitioner also referred to various pronouncements and it was submitted that the question of condonation of delay was a question of pure discretion of the court. It was submitted that according to the accused/ respondent No.2,

every day's delay had to be explained which could be extended to every hour, minute and second which was not the intention. In the present case, the petitioner had not taken the plea that the Authorized Representative was unwell or the file was lost in which case, it may be necessary to explain how the things progressed but it was the case of the petitioner that the Authorized Representative had failed to read the order and was praying for pardon. It was contended that the delay could be compensated by imposition of reasonable cost and the other side could not claim to have a vested right in injustice. It was argued that the delay in the instant case was not deliberate and the petitioner did not get any advantage by the delay. It was submitted that after the other side filed a petition before the Hon'ble High Court, the petitioner realized what had happened and read the whole order and realized that certain contentions had been rejected. It was submitted that in the petition under Article 226 of the Constitution, the Hon'ble High Court would also look at Article 227 of the Constitution under which the Hon'ble High Court had the general power of supervision and could look at the whole order. It was contended that at least the petitioner was honest in stating the reason and had not misrepresented the reason for delay in filing the revision petition.

17. It was also contended by the Ld. Counsel for the petitioner that the accused/ respondent No.2 herself, instead of filing a revision petition had filed a petition under Article 226 of the Constitution before the Hon'ble High Court which was not

permissible and that had been done as delay would have come in her way and to avoid the question of delay, petition was filed before the Hon'ble High Court. It was submitted that the petitioner had not tried to mislabel its petition and had exhausted the first remedy that was available to the petitioner.

18. The Ld. Addl. PP for State – respondent No.1 had argued that the revision petition filed by the petitioner was barred by limitation and should be rejected.

19. The Ld. Senior Counsel appearing on behalf of the accused/ respondent No.2 had argued that the present revision petition was hopelessly barred by limitation. It was submitted that it was nowhere mentioned in the application whether the lawyer had read or not read the order and it was only about the Authorized Representative of the petitioner not reading the order. Further the application was silent as to how the petitioner had calculated the delay to be only of 81 days. It was also submitted that the order of the Hon'ble Supreme Court relied upon by the Ld. Counsel for the petitioner was not applicable to the present case and that the order was applicable only in those cases where the limitation was running and the same was clarified in the order of the Hon'ble Supreme Court dated 6.5.2020 on which reliance was placed. It was submitted that the petitioner had failed to mention the same in the application so the application did not give any bonafide ground for delay and the delay was of 247 days and not of 81 days. It was contended that there was no sufficient cause shown for condonation of

delay and the ground taken that the Authorized Representative of the petitioner had not read the order was contrary to the record. It was submitted that the impugned order was passed on 25.9.2019 and the situation due to COVID-19 arose in March, 2020 but it was nowhere stated in the application when the detailed order was read. It was submitted that the revision petition was filed on 27.8.2020 and reference was made to the order sheets of the Ld. Trial Court and that after the impugned order was passed, arguments were heard on discharge and thereafter notice under Section 251 Cr.P.C. was served on the respondent No.2 in the presence of all the counsels. It was submitted that the notice was not in respect of three words. Thereafter the Authorized Representative of the petitioner had appeared in court for getting his statement recorded and it could not be believed that he would not be aware of the order on summoning that was passed or had not read it. It was contended that no sound person would appear for evidence in court without having read the order and it could not be accepted that till August, 2020, the Authorized Representative of the petitioner had not read the order.

20. The Ld. Senior Counsel had further argued that the present revision petition was filed as an after-thought and counter blast to the Writ Petition filed by the respondent No.2 before the Hon'ble High Court by which the order on summoning and the notice served upon the respondent No.2 were challenged. It was argued that having realized that the Hon'ble High Court may take the view that the respondent No.2 had already

been exonerated for certain words, the present revision petition was filed challenging the impugned order. It was submitted that the revision petition had been filed to deprive the respondent No.2 of taking the grounds ‘t’ and ‘u’ which had been taken in the Writ Petition filed before the Hon’ble High Court. It was contended that the present revision petition was filed after 12 dates had already passed since the impugned order before the Ld. Trial Court so it was not a case of simple negligence and a perusal of the record would show that the petitioner had read the order and such an argument that the petitioner had not read the order could not be accepted. It was submitted that the calculation of days was not done properly and while explanation was not to be given for every hour’s delay but there was no explanation for any day’s delay. It was submitted that sufficient cause for condoning the delay had not been shown and the Ld. Counsel for the petitioner himself had accepted negligence and there was negligence both in action and in conduct which stood established by the respondent No.2.

21. The Ld. Senior Counsel pointed out that the petitioner had not been forthcoming and did not challenge the impugned order till the respondent No.2 filed a Writ Petition before the Hon’ble High Court. Moreover sufficient cause had to be shown from the application for condonation of delay and not from the rejoinder. It was settled law that a litigant had to be vigilant and it was only stated that the Authorized Representative of the petitioner was not vigilant and not whether the counsel for the petitioner was

vigilant or not. It was argued that even in cases involving the government, undue delay had not been accepted by the courts and reference was made to several judgments in this regard. It was argued that if the delay was condoned and the revision petition was accepted after a delay of 247 days, it would cause prejudice to the case of the respondent No.2 before the Hon'ble High Court. Moreover the respondent No.2 would have to face the stage of notice under Section 251 Cr.P.C. again which would have to be amended. It was submitted that the court could take a liberal approach only if there was no gross negligence or there was no deliberate inaction and the application was filed bonafide but in the instant case, negligence had been accepted by the petitioner itself. It was submitted that the delay in filing the revision petition was not bona fide and condonation of delay would cause grave prejudice to the respondent No.2. No sufficient cause had been shown to condone the delay and the revision petition had been filed as a counter blast to the Writ Petition filed by the respondent No.2 before the Hon'ble High Court. It was also submitted that the Ld. Trial Court had held that a company could not be uneducated or 'budbak' and by the same logic a company could also not be 'chor'. It was submitted that the revision petition had been filed on flimsy grounds.

22. The Ld. Counsel for the petitioner in rejoinder had argued that there was no question of it being mentioned whether the lawyer had read the impugned order or not as the job of the lawyer was to advise the client if he came to challenge an order and the

question of the lawyer reading or not reading the order did not arise and the argument was contrary to the principle of privileged communication. The lawyer could not be expected to give an affidavit of what he had advised his client. It was further submitted that in the application for condonation of delay, no details of how 81 days were computed were given as it was obvious that limitation had been stopped with effect from 15.3.2020 and the calculation of 81 days was not incorrect. It was also contended that there was no merit in the argument that the Authorized Representative of the petitioner had come for complainant evidence so he would be aware of the impugned order in detail as he would have read the complaint for that purpose and not the summoning order and he knew that the respondent No.2 had already been summoned. It was also submitted that strict proof in respect of delay was not required and there was no requirement to state the specific date, time. It was stated that the order of the Hon'ble Supreme Court dated 6.5.2020 was in respect of cases under the Negotiable Instruments Act, 1881 but that was on basis of clarification which was sought and the order of March, 2020 extended limitation in all the cases except the cases of statutory bail. It was submitted that it was not for the subordinate court to say if the judgment was correct or not and it was binding and even filing was not allowed during the lockdown times. It was contended that there was no presumption against the petitioner that the delay was malafide or there was deliberate inaction and it was for the respondent No.2 to show that there was deliberate inaction or the application was malafide but the respondent

No.2 had failed to show the same and there was no material to show the same. The lapse on the part of the petitioner had been admitted and the same could be compensated in terms of cost and if the application was allowed, it would not cause any loss to the respondent No.2 who had already been summoned and there would be no prejudice. It was also submitted that the respondent No.2 had been summoned not only for the use of the word 'chor' but also for using the words 'paid news'.

23. Before adverting to the merits of the application, it would be apposite to refer to the factual matrix. The complainant company/ petitioner had filed a complaint under Sections 499 and 500 of the IPC through its Authorized Representative alleging that on 3.7.2019, the accused/ respondent No.2 who is a Member of Parliament to the 17th Lok Sabha from Krishna Nagar, West Bengal made defamatory statements against the complainant company/ petitioner wherein she knowingly made several frivolous, false, malicious and derogatory statements which were highly defamatory to the reputation and goodwill of the complainant company/ petitioner in front of various persons, including the reporters of various media channels and were made with the specific intention to harm the reputation and to defame the complainant company/ petitioner. The defamatory allegations were "*aap ka jo paid news vo kya keh rahe hai I am not bothered about them"* and *"aap logo ka jo channel hai vo chor hai, uska owner chor hai, nai nai, aap log nai kar sakte mene press release diya hai, aap log itne uneducated*

aur budwak hai, hum press release abhi de rahe hai".

24. The complainant company/ petitioner in support of its case had examined its Power of Attorney holder Shri Vishal Pandey and Shri Dherander Sahu, cameraman at the time of the incident. The Ld. ACMM-I vide the impugned order had held as under:

> *"13. The aforesaid discussion shows that allegations of the respondent relating to the allegation of "paid news" and calling the complainant company and its owner a "thief" are prima facie defamatory and refers to complainant Zee Media Corporation Limited making it an aggrieved person within the meaning of section 199 Cr.P.C."*

The respondent No.2 was summoned for the use of the said words but it was also held that calling somebody stupid or uneducated and particularly to a company was not defamatory. On 25.10.2019, the respondent No.2 entered appearance through her counsels though she was not yet served. Arguments were heard on the point whether the accused could be permitted to address arguments on the point of notice under Section 251 Cr.P.C. in a summon triable case instituted upon a complaint. Vide detailed order dated 10.1.2020, it was held by the Ld. ACMM-1 that no ground was made out for hearing the accused at the stage of framing of notice under Section 251 Cr.P.C. and notice under Section 251 Cr.P.C. was served upon the respondent No.2 to which she pleaded not guilty and claimed trial. The matter was listed for complainant's evidence on 18.2.2020 but on that day an application under Section 91 Cr.P.C. was filed on behalf of the respondent No.2. Thereafter the matter was adjourned on several dates on account

of the pandemic. Reply was filed to the application under Section 91 Cr.P.C. by the petitioner as noted in the order sheet dated 13.7.2020 of the Ld. ACMM-I to which rejoinder was filed as noted in the order sheet dated 28.7.2020 and the matter was posted for 6.8.2020 for arguments on the application. On that day it was submitted by the Ld. Counsel for the respondent No.2 that they had approached the Hon'ble High Court and the matter was listed on 6.10.2020 before the Hon'ble High Court. Meanwhile the present revision petition was filed on 27.08.2020.

25. Along with the revision petition, an application was filed under Section 5 of the Limitation Act for condonation of delay in filing the revision petition. The main ground taken in the application is that the Authorized Representative of the complainant company/ petitioner had only read the short order that the accused/ respondent No.2 had been summoned and had not read the detailed order. During the COVID times, the Authorized Representative obtained the detailed summoning order and after going through the same, found out that the Court had not summoned the accused/ respondent No.2 on defamatory words said by the accused/ respondent No.2 i.e. "*aap log itne* ***uneducated*** *aur* ***budwak*** *hai*", which were also defamatory and thereafter upon getting legal advice, he had instructed for filing of the revision petition which could thus not be filed within time and the delay of 81 days in filing the revision petition was bonafide and irreparable harm would be caused if the delay was not condoned. On the other hand,

it is the contention of the respondent No.2 that the present revision petition filed by the petitioner was hopelessly barred by time and no sufficient cause had been shown by the petitioner to condone the delay in filing the revision petition.

26. At the outset, a contention was raised on behalf of the respondent No.2 that the delay in filing the revision petition was in fact 247 days and not 81 days as had been stated in the application for condonation of delay. A table in this regard was given in point (c) of para 3 of the reply filed on behalf of the respondent No.2 to the application for condonation of delay filed on behalf of the petitioner stating that the period of limitation expired on 24.12.2019 i.e. 90 ninety days from the date of the impugned order dated 25.9.2019 and that the revision petition was filed on 27.8.2020. The date of the impugned order i.e. 25.9.2019 is a matter of record and the law of limitation prescribes a period of 90 days for filing a revision petition. As such, the limitation for filing the revision petition would expire on 24.12.2019. Thus, on the face of it, calculated till the filing of the revision petition, there would be a delay of 247 days in filing the revision petition. The petitioner had however contended that the delay of 81 days which was shown in the application for condonation of delay was correctly calculated as by virtue of the order of the Hon’ble Supreme Court, the limitation stood extended from 15.3.2020 so the delay could be calculated only till 15.3.2020 and the limitation stood frozen thereafter. Reliance in this regard was placed on the order of the

Hon'ble Supreme Court dated 23.3.2020 in **In Re: Cognizance For Extension of Limitation (supra)** wherein the Hon'ble Supreme Court held as under:

> "*This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/ or State).*
>
> *To obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/ s to be passed by this Court in present proceedings.*
>
> *We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/ Tribunals and authorities.*"

It is thus seen that by virtue of the said order, the Hon'ble Supreme Court had extended the period of limitation w.e.f. 15.03.2020 in respect of all petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not till further order/s to be passed. The Ld. Counsel for the petitioner had also submitted that the said order of the Hon'ble Supreme Court was binding on this Court and the said order had not been revoked yet and there can be no dispute with the same as the order of the Hon'ble Supreme Court would

clearly be binding on this Court.

27. The Ld. Senior Counsel for the respondent No.2 on the other hand had relied on the order of the Hon'ble Supreme Court dated 6.5.2020 in the same matter wherein it was held:

> *"In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings."*

On the basis of the said order, it was contended on behalf of the respondent No.2 that the order extending limitation was not applicable to the present case. However, the order dated 6.5.2020 was passed specifically in context of the Arbitration and Conciliation Act, 1996 and Section 138 of the Negotiable Instruments Act 1881 as clarification had been sought by the petitioner therein in respect of the said statutes and the general order dated 23.3.2020 was applicable to all other proceedings. The Ld. Senior Counsel for the respondent No.2 had then placed reliance on the following observations of the Hon'ble Supreme Court in the order dated 6.5.2020:

> *"In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown."*

And it was argued that the said orders of the Hon'ble Supreme Court were applicable only in those cases where the limitation expired after 15.3.2020 and hence would not be applicable in the instant case wherein the limitation had expired on 24.12.2019 itself i.e. much prior to the order dated 23.3.2020 of the Hon'ble Supreme Court. While reiterating that the order dated 6.5.2020 was passed by the Hon'ble Supreme Court on an application seeking clarifications in respect of the Arbitration and Conciliation Act, 1996 and Section 138 of the Negotiable Instruments Act 1881, it is also the general principle of law of limitation that limitation once it starts continues to run (Section 9 of the Limitation Act lays down "where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it"). Moreover it is the case of the petitioner itself that the Authorized Representative, during the COVID times obtained the detailed summoning order and after taking legal advice instructed for filing of the revision petition and it is not the case of the petitioner that due to COVID pandemic it was precluded from filing the petition for a certain period of time. The Ld. Counsel for the petitioner had also submitted that it was after the filing of the writ petition by the respondent No.2 that the petitioner had proceeded to take action and as such the stand taken by the petitioner is quite contradictory in that, on the one hand it is

placing reliance on the order of the Hon'ble Supreme Court by which limitation stood extended w.e.f. 15.3.2020 and on the other hand is itself stating that it was only during the COVID times (i.e. much after the period of limitation for filing the revision petition had already expired) that the Authorized Representative of the petitioner obtained the detailed order and thereafter took action and the same was so stated both in the application and the rejoinder that was filed. At the same time, in the present case it cannot be lost sight of that due to the COVID-19 pandemic, regular filing of petitions remained suspended for some time.

28. At this juncture, reference may be made to Section 5 of the Limitation Act and the said Section, in so far is material is reproduced hereunder:

> "***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."*

Thus for the applicability of Section 5 of the Limitation Act in the instant case and the revision petition to be admitted after the expiry of the period of limitation, the petitioner has to satisfy the court that it had 'sufficient cause' for not preferring the revision petition within the prescribed period. The Ld. Counsel for the petitioner had argued that the words 'sufficient cause' in Section 5 of the Limitation Act had to be construed

liberally and the court was not to take a hyper-technical view; the court had to be liberal for advancing substantial justice and a litigant could not be shut out at the threshold. Reliance was placed on the judgment of the Hon'ble High Court of Delhi in **New Okhla Industrial Development Authority** v. **Km Paramjit (supra)** wherein it was observed as under:

> "*The words 'sufficient cause' as appearing in Section 5 of the Limitation Act have to be construed liberally so as to advance substantial justice to the parties; a litigant should not be shut out at the threshold and be deprived of the opportunity to be heard on merits; delay may be condoned provided that the applicant is able to furnish a sufficiently justifiable explanation for his delay. No hard and fast rule can be laid down. Each case has to be decided on its factual matrix. Unless there is lack of bona fides or a total inaction or negligence on the part of the litigant, the protection of Section 5 should not be deprived to a party; mistake of a counsel may also amount to a sufficient cause for condonation of delay; it is always a question of fact*."

Thus it was held that the words 'sufficient cause' have to be construed liberally so as to advance substantial justice to the parties. However, the Hon'ble High Court also observed that delay may be condoned provided that the applicant was able to furnish a sufficiently justifiable explanation for his delay and as such a sufficiently justifiable explanation for the delay would be a sine qua non for condoning delay. It was also held that unless there was lack of bona fides or a total inaction or negligence on the part of the litigant, the protection of Section 5 should not be deprived to a party.

29. Reliance was further placed on the judgment of the Hon'ble Supreme Court in **State of Nagaland** v. **Lipok Ao & Ors. (supra)** wherein it was observed as under:

> *"Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court 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. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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. 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. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."*

30. The Ld. Counsel for the petitioner also relied on the judgment of the Hon'ble High Court of Delhi in **M/s. Kodak India Pvt. Ltd.** v. **State & Ors. (supra)** and it was submitted that in the said matter delay of 298 days in filing the revision petition was condoned observing that even if there was no explanation for each day's delay, the Courts would not refuse to examine the case on merit. It was observed as under:

> *"6. Petitioner is the Complainant and it does not stand to gain anything by resorting to delay. Adoption of strict standard of proof fails to protect public justice and a pedantic approach needs to be avoided, and justice oriented approach ought to be adopted. The delay occasioned cannot be said to be malafide and appears to be bonafide one. Even if there is no explanation for each day's delay in pursuing the matter by the Complainant, this court would not refuse to examine the case on merit by putting a shield of technicality but would rather like to condone the delay which appears to be bonafide one."*

Thus it has been held that a pedantic approach should not be adopted rather a justice oriented approach ought to be adopted. Even if there was no explanation for each day's delay, the court would not refuse to examine the case on merits and would condone the delay which appeared to be bonafide. It was also submitted on behalf of the petitioner that the Court while dealing with the application for condonation of delay has to even look at the merits of the matter and meritorious matter should not be dismissed on the ground of limitation and reliance was placed in this regard on the judgement of the

Hon'ble High Court of Delhi in **Delhi Development Authority v. RS Jindal and Anr. (supra)** wherein it was observed as under:

> *"2. The Respondent has relied upon several judgments. We do not propose to separately refer to these judgments as the principles of Law are well settled. Delay in filing of an appeal has to be satisfactorily or reasonably explained. However, it is not each days delay that is to be put under scanner nor is it a fault finding exercise by the Courts. Unless it is a case of gross negligence, Courts are liberal in condoning delays where proper explanation and cause for the delay has been set out. Courts dispense justice and therefore unless there are reasons to hold that the delay was deliberately occasioned for gaining an advantage and benefit, a meritorious matter should not be dismissed on the ground of limitation. At the same-time we are gradually but certainly moving in the direction of stricter compliance with provisions prescribing time limits and limitation. Normally, no distinction is made between an application for condonation of delay filed by a private party and the Government or public authorities. Government and public authorities should comply with the limitation periods prescribed by law just as it's subjects, if not lead by setting an example. However, Courts are conscious that exerting standard should not be applied in all circumstances and care has to be taken about disabilities and the ground reality. The Supreme Court in the case of State of Haryana v. Chandramani and Ors. : (1996) 3 SCC 132 has accepted the fact that on account of impersonal machinery, file pushing and inherent bureaucratic methodology imbued in Government and public authorities, decision making process is slow and considerable time is taken, thereby causing delay, sometimes intentionally and sometimes otherwise. In these circumstances the Supreme Court has held that the expression "sufficient cause" should be viewed from a pragmatic and justice oriented approach. Similar observations have been made in the State of Nagaland v. Lipok Ao : (2005) 3 SCC 752 and it has been*

> *opined that the term "sufficient cause", should, therefore, be considered with pragmatism in a justice oriented approach rather than technical detection of sufficient cause for every day's delay."*

In this case as well it was held that it was not each day's delay which had to be put under scanner and unless it was a case of gross negligence, courts were liberal in condoning delays where proper explanation and cause for the delay had been set out.

31. The Ld. Senior Counsel for the respondent No.2 on the other hand had relied on the judgment of the Hon'ble Supreme Court in **Esha Bhattacharjee's case (supra)** wherein the Hon'ble Supreme Court had culled out the principles to be kept in mind while dealing with an application for condonation of delay as under:

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

(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.

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

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harboring 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.

(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.

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

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

The Ld. Senior Counsel had submitted that the said principles were applicable in the present case which was a case of gross negligence and lack of bonafides; moreover if the petition was accepted after 247 days, it would cause prejudice to the case of the respondent No.2 before the Hon'ble High Court; and the petitioner had not been forthcoming and the petition was clearly an afterthought. It was also submitted that in the present case, the application for condonation of delay did not indicate any cogent reasons for delay but provided a justification that was wholly unbelievable. The Ld. Senior Counsel had also adverted to the reference made in this judgment to the judgment of the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Limited** v. **Gujarat Industrial Development Corporation and Anr.** MANU/SC/0141/2010 : (2010) 5 SCC 459 where a "two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not

prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate." Further reference was made to the observation of the Hon'ble Supreme Court in **N. Balakrishnan** v. **M. Krishnamurthy** MANU/SC/0573/1998 : AIR 1998 SC 3222 as under:

> "*The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the 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 Ld. Counsel for the petitioner, on the other hand had also relied on the following observations of the Hon'ble Supreme Court in **N. Balakrishnan** v. **M. Krishnamurthy**

(supra):

> *"A court knows that refusal to condone delay would result in 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 vide Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal v. The Administrator, Howrah Municipality [AIR 1972 SC 749]. 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 malafides 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 looser 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."*

It was thus argued by the Ld. Counsel for the petitioner that the words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal interpretation and there was no presumption in the instant case that the delay in approaching the court was deliberate; moreover the lapse on the part of the petitioner would not be enough to turn down its plea if the explanation did not smack of malafides or was not put forth as part of a dilatory strategy and the respondent No.2 could be suitably compensated in terms of cost.

32. The Ld. Senior Counsel for the respondent No.2 had then relied on the judgment of the Hon'ble High Court of Delhi in **Mitender Pal Solanki's case (supra)** wherein while declining to condone delay in filing the appeal, it was observed that a litigant ought to be vigilant of the judicial proceedings and that it was a case of gross inaction, negligence and lethargies on the part of the appellant in preferring the appeal. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh** v. **Bherulal (supra)** wherein delay even in case of SLP filed by the State was not condoned and in fact cost was imposed.

33. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Office of the Chief Post Master General and Ors.** v. **Living Media India (supra)** wherein it was observed as under:

> *"…Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*
>
> *13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The government departments are under a special*

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

34. In this background, the plea taken by the petitioner has to be examined. The ground taken by the petitioner in the application for condonation of delay is that the Authorized Representative of the petitioner had only read the short order that the accused/ respondent No.2 had been summoned and had not read the detailed order; during the COVID times, the Authorized Representative obtained the detailed summoning order and found out that the Court had not summoned the accused/ respondent No.2 for certain defamatory words whereupon the Authorized Representative of the petitioner took legal advice and instructed for filing of the revision petition. While an explanation is sought to be given in the application for the delay in filing the revision petition, a perusal of the application for condonation of delay shows that it is entirely bereft of any particulars:

a) It is not stated when the Authorized Representative obtained the detailed summoning order and found out that the Court had not summoned the accused/ respondent No.2 for certain defamatory words. In the application and the

rejoinder it has merely been stated that during COVID times, the Authorized Representative of the petitioner obtained the detailed summoning order but it is not stated when the order was obtained or when the Authorized Representative took legal advice or when he obtained the legal advice and instructions were given to file the revision petition. Moreover it is not the case of the petitioner that the order was not available or that copy of the order was not supplied when applied for and as submitted on behalf of the respondent No.2, copy of the order would have always been available on the website of the Ld. Trial Court.

b) It is not even stated what was the occasion for the Authorized Representative to obtain the detailed summoning order during the COVID times which would in any case be after middle of March, 2020 whereas the order had been passed on 25.09.2019 making it six months or more after the passing of the impugned order. It may be mentioned that the revision petition bears the date 11.8.2020 though it was filed on 27.8.2020 but nowhere it is mentioned whether there was any specific reason for obtaining the detailed summoning order after a lapse of so many months from the date when it was passed and why the petitioner did not chose to obtain it earlier. The Ld. Counsel for the petitioner had submitted that as the impugned order was not adverse to the petitioner, the petitioner was under the impression that the respondent No.2 had been summoned and the petitioner did not realize that the impugned order needed to

be challenged as certain contentions were rejected vide the impugned order. No doubt by the impugned order, the respondent No.2 had been summoned, albeit in respect of some of the alleged defamatory words, but again what made the petitioner go through the detailed summoning order only during COVID times was not stated in the application and it was again only during the course of arguments, it was submitted that after the other side filed a petition before the Hon'ble High Court, the petitioner realized what had happened and read the whole order and realized that certain contentions had been rejected. As such, only oral submissions were made in this regard and the application itself was silent on why the petitioner obtained and read the detailed summoning order after the period of limitation for filing the revision petition was already over.

35. The Ld. Counsel for the respondent No.2 had argued that each day's delay has to be explained but even if the said contention is not accepted and the pronouncements of the Hon'ble Apex Court are also to the effect that a pedantic approach is not to be adopted, still it is the duty of the petitioner, while filing an application for condonation of delay to state at least some details for perusal of the court to enable the Court to appreciate the reason which occasioned the delay. In the instant case, no explanation is forthcoming for any day's delay whatsoever except for a general explanation which is sought to be put forth without being supported by any details. Here the principle enunciated by the Hon'ble Supreme Court in **Esha Bhattacharjee's case (supra)** may

be reiterated:

> "*An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harboring 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.*

Thus it was laid down that an application for condonation of delay should be drafted with careful concern and not in a half hazard manner whereas in the present case the application seems to have been drafted in a very casual manner and no details whatsoever are forthcoming, except for bare averments that during the COVID times, the Authorized Representative obtained the detailed summoning order and found out that the Court had not summoned the accused/ respondent No.2 for certain defamatory words whereupon the Authorized Representative of the petitioner took legal advice and instructed for filing of the revision petition.

36. It was then contended on behalf of the petitioner that the petitioner had been honest in stating the reason for the delay in filing the revision petition and had not tried to set up a false plea and since the summoning order was in favour of the petitioner and the respondent No.2 stood summoned, the petitioner was under the impression that nothing further needed to be done. As such it is the case of the petitioner that the Authorized Representative of the petitioner became aware of the contents of the order dated 25.9.2019 only when detailed summoning order was obtained during COVID times and was not aware prior to that the respondent No.2 had not been summoned for

certain words. A perusal of the record shows that after the passing of the order dated 25.09.2019, on several dates the matter was taken up before the Ld. Trial Court which may be summarized as under:

i) 25.10.2019- The accused/ respondent No.2 was not served but her counsels filed vakalatnama.

ii) 22.11.2019- Nothing substantial happened.

iii) 17.12.2019- Accused/ respondent No.2 was admitted to bail and submissions were made by both the Ld. Counsels on the point whether the accused could be permitted to address the arguments on the point of notice under Section 251 Cr.P.C. in a summon triable case instituted upon a complaint.

iv) 10.01.2020- Vide detailed order, the Ld. ACMM-1, RADC held that the accused as a matter of right could not be heard at the stage of framing of notice under Section 251 Cr.P.C. and notice was served upon the accused/ respondent No.2 to which she pleaded not guilty and claimed trial. It may be mentioned that the notice was specifically for the words for which the accused/ respondent No.2 had been summoned.

v) 18.2.2020- Matter was listed for complainant evidence and two witnesses were present including the Authorized Representative of the petitioner and on

that day an application under Section 91 Cr.P.C. was filed on behalf of the respondent No.2.

vi) 18.3.2020- Matter was adjourned in view of the advisory issued by the Hon'ble High Court of Delhi dated 16.3.2020.

On all these dates, the petitioner was duly represented by its counsel before the Ld. Trial Court including on the date when notice was served upon the accused/ respondent No.2.

vii) 11.05.2020- Matter was adjourned en-bloc due to the COVID-19 pandemic.

viii) 9.06.2020- Matter was again adjourned en-bloc due to the COVID-19 pandemic.

ix) 8.07.2020- None was present and matter was adjourned for 13.7.2020 to be taken up through video conferencing.

x) 13.07.2020- Matter was taken up through video conferencing and learned counsels for both the sides were present. Reply had been filed to the application under Section 91 Cr.P.C. filed by the respondent No.2 and time was sought to file brief written synopsis/ arguments on the application.

xi) 28.7.2020- Matter was taken up through video conferencing in the presence of learned counsels for both the sides and rejoinder was filed on behalf of the accused/ respondent No.2 to the reply filed by the petitioner to the application

filed by the accused/ respondent No.2 under Section 91 Cr.P.C.

xii) 06.08.2020- Matter was taken up through video conferencing in the presence of learned counsels for both the sides and it was submitted by the Ld. Counsel for the accused/ respondent No.2 that they had approached the Hon'ble High Court of Delhi and the matter was listed before the Hon'ble High Court on 6.10.2020 though there was no actual stay.

Thereafter the present revision petition was filed on 27.8.2020.

37. It is thus seen that the petitioner was duly represented by a counsel on every date and even notice had been served upon the accused/ respondent No.2 under Section 251 Cr.P.C. for the specific words for which the accused/ respondent No.2 had been summoned in the presence of the Ld. Counsels for the petitioner. The Ld. Senior Counsel for the respondent No.2 had contended that the Authorized Representative of the petitioner had appeared in the court for getting his statement recorded in evidence and it could not be believed that he would not be aware of the order on summoning to which the Ld. Counsel for the petitioner had submitted that for getting his evidence recorded, the Authorized Representative would have read the complaint and not the summoning order but the said argument of the Ld. Counsel for the petitioner is neither here nor there as being the Authorized Representative of the petitioner, it was incumbent on the Authorized Representative of the petitioner to be aware of the orders passed by

the Court and he could not seek to hide behind the veil of ignorance of the order.

38. It was argued by the Ld. Counsel for the respondent No.2 that it had been stated in the application that the Authorized Representative had read only the short order and not the detailed order initially but it was nowhere stated whether the counsel had also read the detailed summoning order or not to which the Ld. Counsel for the petitioner had submitted that the lawyer acted only on the instructions of the client and the job of the lawyer was to advise the client if he came to challenge an order and the question of the lawyer reading or not reading the order did not arise and the communication between the client and the lawyer was privileged. However, in the instant case, once the counsel was appearing on behalf of the petitioner on every date, the petitioner would be deemed to have knowledge of the proceedings before the court and a plea cannot be taken that the Authorized Representative of the petitioner became aware of the detailed summoning order only when he obtained a copy of the same during COVID times. Moreover ignorance of an order is no plea. Reference may again be made to the judgment of the Hon'ble Supreme Court in **Esha Bhattacharjee's case (supra)** wherein the ground taken for condonation of delay was that the respondents were not aware of the order passed by the learned single Judge till they received the notice of the contempt application and thereafter because of miscommunication between the counsel and the parties no steps could be taken and eventually, an application for vacation of

stay was filed and thereafter, the appeal was preferred, the Hon'ble Supreme Court had observed that the respondents were really taking resort to dilatory tactics by not seeking necessitous legal remedy in quite promptitude and that plea of lack of knowledge in that case really lacked bonafide. Similar is the position in the instant case as plea of lack of knowledge clearly lacks bonafide and it is quite obvious that the petitioner chose to keep quiet till it became aware of the writ petition filed by the respondent No.2 before the Hon'ble High Court.

39. The Ld. Counsel for the petitioner would then argue on the strength of the judgment of the Hon'ble Supreme Court in **N. Balakrishnan** v. **M. Krishnamurthy (supra)** that there was no presumption that the delay in approaching the court was deliberate; moreover the lapse on the part of the petitioner would not be enough to turn down its plea if the explanation did not smack of malafides or was not put forth as part of a dilatory strategy and the respondent No.2 could be suitably compensated in terms of cost. However, it is obvious in the present case that the petitioner rather than availing its remedies soon after the impugned order was passed, did not chose to take any action till the writ petition was filed by the respondent No.2 and it cannot be termed as a mere lapse on the part of the Authorized Representative of the petitioner. The plea of not having read the detailed summoning order clearly lacks bonafide and the plea taken by the petitioner that it was not aware till the detailed summoning order was obtained that

the accused/ respondent No.2 had been summoned qua only certain words and not qua the other words and the petitioner was under a bonafide belief that the accused/ respondent No.2 stood summoned, the order dated 25.9.2019 was in its favour and it need not have done anything further is clearly without merits. The contention that the petitioner had at least been honest in stating the reason for the delay and had not set up a false plea would also be of no avail in view of the aforesaid discussion.

40. It is no doubt the settled law that the words "sufficient cause" in Section 5 of the Limitation Act should be given a liberal interpretation and the court should seek to do substantial justice but the law is also that the party has to show sufficient cause for delay to be condoned and the words contained in the statute cannot be given a go by and where the petitioner fails to show any sufficient cause for delay in filing the revision petition, the Court cannot only on the basis of a precocious plea of not being aware of the order of the Court which is also not substantiated and is rather contrary to the record, allow an application for condonation of delay. The Hon'ble High Court of Delhi in the judgment in **New Okhla Industrial Development Authority** v. **Km Paramjit (supra)** on which reliance was placed by the Ld. Counsel for the petitioner had held that delay may be condoned provided that the applicant was able to furnish a sufficiently justifiable explanation for the delay which is not so in the present case. The present case would also be covered by the observation in the said judgment that unless there was

lack of bonafides or a total inaction or negligence on the part of the litigant, the protection of Section 5 should not be deprived to a party whereas in the instant case there is nothing to show why the protection of Section 5 should be extended to the petitioner. The present case is also fully covered by the principles laid down by the Hon'ble Supreme Court in **Esha Bhattacharjee's case (supra)**. The Court would adopt a liberal approach when there is no gross negligence or no deliberate inaction and the application is filed bonafide which is not so in the instant case.

41. The Ld. Counsel for the petitioner had also submitted that the merits of the case had to be considered and a meritorious case could not be thrown out at the threshold on the ground of limitation for which reliance was placed on the judgment of the Hon'ble High Court Delhi in **Delhi Development Authority** v. **RS Jindal and Anr. (supra)** but therein also it was observed that "unless it is a case of gross negligence, the Courts are liberal in condoning delays where proper explanation and cause for the delay has been set out" but in the instant case, it cannot be said that the explanation for delay is proper or sufficient or that the delay had been satisfactorily or reasonably explained. Moreover reference may be made to the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh** v. **Bherulal (supra)** on which reliance was placed by the Ld. Senior Counsel for the respondent No.2 wherein it was observed:

> "*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. If a*

> *case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay."*

Thus, the Hon'ble Supreme Court held that it could not be contended that if there was some merit in the case, the period of delay is to be given a go-by.

42. The Ld. Counsel for the petitioner had then argued that the present was not a case of grave prejudice to the accused/ respondent No.2 as she had already been summoned by the Ld. Trial Court and it did not matter if the accused/ respondent No.2 had to defend on one or two points and she had to appear and contest the case anyway and no right had accrued in favour of the other side which plea was opposed by the Ld. Senior Counsel on behalf of the respondent No.2. However, the contention that grave prejudice would not be caused to the respondent No.2 if the application was allowed or even if the revision petition itself was allowed cannot be reason enough to allow the application for condonation of delay when the petitioner itself has failed to show any sufficient cause for condoning the delay.

43. It may also be mentioned that on behalf of the petitioner, it was contended that the respondent No.2 had challenged the order dated 25.09.2019 by way of Writ Petition under Article 226 read with Section 482 Cr.P.C. on 04.08.2019 to escape the time bar/ limitation of the order which itself was not maintainable and reliance was placed on the

judgement of the Hon'ble High Court of Delhi in **A.K. Dixit** v. **Manoj Kumar & Ors. (supra)** wherein it was held as under:

> "5. *It need hardly be said that the remedy under Section 482 of the Code can be availed at the initial stage and if there is no other remedy available to the person aggrieved by the impugned order. In the instant case admittedly remedy by way of criminal revision under Section 397 of the Code was very much available, provided the same was within the limitation, to the present petitioner and that remedy has not been availed of probably for the reason that criminal revision by that time had become time barred. I am not inclined to accept the request that this petition under Section 482 be converted and treated as a criminal revision under Section 397 of the Code for the reason that by permitting the same, it would tantamount to the circumventing/by passing the delay/bar of limitation for the purpose of filing revision under Section 397 of the Code.*
>
> *6. Thus, it will be seen that though the remedy U/s 397 of the Code was available to the Petitioner, the Petitioner did not avail the same and has chosen to file this Petition U/s 482 of the Code for the obvious reason, as stated above.*
>
> *7. I am not inclined to entertain the petition under Section 482 of the Code for the reason that the petitioner did not avail the remedy available to him under Section 397 of the Code and has chosen to file this petition under Section 482 of the Code which can be invoked at the initial stage of the institution of the proceedings and that too only when there is no remedy available."*

However, the question whether the Writ Petition filed by the respondent No.2 before the Hon'ble High Court was maintainable or not or the question of limitation with respect

to the same cannot be gone into by this Court when the matter is before the Hon'ble High Court. It was then contended by the Ld. Counsel for the respondent No.2 that the present revision petition had been filed to overcome the grounds taken by the respondent No.2 in the Writ Petition filed by the respondent No.2 before the Hon'ble High Court while the Ld. Counsel for the petitioner had argued that the respondent No.2 had been summoned not just for the use of the word 'chor' but also for use of 'paid news' but again this issue cannot be gone into by this Court as the matter is before the Hon'ble High Court.

44. In view of the above discussion, the application for condonation of delay in filing the revision petition filed under Section 5 of the Limitation Act on behalf of the petitioner is without merit and is dismissed. In view of the dismissal of the application for condonation of delay, the revision petition would not survive and the same is also accordingly dismissed.

45. Trial Court Record be sent back with copy of order.

File be consigned to Record Room.

Announced in the Open Court
on this 3rd December of 2020

(Geetanjli Goel)
ASJ/Spl. Judge (PC Act) (CBI)-24
(MPs/MLAs Cases),
Rouse Avenue District Court, New Delhi