2025:AHC-LKO:86191-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

SPECIAL APPEAL DEFECTIVE No. - 516 of 2012

The Prin.Secy. Public Works Deptt.Lko.And Ors.
4744s/S2006

.....Appellant(s)

Versus

Shiva Kant Ojha

.....Respondent(s)

Counsel for Appellant(s)	:	C.S.C
Counsel for Respondent(s)	:	R.B.Tewari

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.

C.M.A. No.57510 of 2012 (Application for Condonation of Delay)

1. Heard.

2. This appeal was filed by the State on 13.07.2012 challenging the judgment and order dated 30.08.2011 passed in Writ Petition No.4744 (S/S) of 2006.

3. The limitation for filing special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 is 30 days vide Chapter IX Rule 10 of the Rules, 1952 read with Article 117 of the Schedule appended to the Limitation Act, 1963. The appeal was filed with a delay of 9 months and 14 days.

4. We have perused the affidavit filed in support of the application for condonation of delay in filing the appeal. According to which the matter was referred vide letter dated 15.09.2011 to the Chief Engineer, Allahabad Zone, P.W.D. for guidance, who in turn sought necessary instructions and legal opinion vide his letter dated 23.09.2011. Legal opinion was sought by the appellant from the Law Officer in the office of Engineer-in-Chief, P.W.D., who gave legal opinion on 03.11.2011. The date of seeking legal opinion has not been mentioned, but it is apparent that almost one and half

months were utilized in seeking opinion from a Law Officer, who was stationed in the office of the head of the department, therefore, was easily accessible. After receipt of legal opinion, the same was forwarded to the Chief Engineer, Allahabad Zone on 08.12.2011, who in turn directed the appellant to do the needful vide letter dated 12.01.2012, i.e. more than a month after the legal opinion being sent to him about which there is no explanation in the affidavit. On 27.01.2012 the appellant wrote to Joint Secretary, P.W.D. seeking guidance. The Law Department ultimately granted permission for filing appeal on 04.05.2012. Now there is a gap of more than three and a half months, which has not been explained. The affidavit merely narrates how the file or the matter kept moving from one desk/office to another. This is hardly an explanation for condoning such inordinate delay in view of the recent decision of Hon'ble the Supreme Court in the case of **Shivamma (dead) by LRS Vs. Karnataka Housing Board and Ors.** reported in **2025 SCC OnLine 1969.**

5. After receipt of permission dated 04.05.2012, ultimately the appeal was filed on 13.07.2012, i.e. after two months. This also does not demonstrate any urgency on the part of the appellant in preferring the appeal nor does the affidavit contain any sufficient and satisfactory explanation in support thereof except that the file was allotted to the Standing Counsel on 07.05.2012 and the records were supplied to him on 17.05.2012. If it was so then we fail to understand as to why after the records being provided to the said Standing Counsel on 17.05.2012, the appeal was preferred almost two months later. The affidavit is not at all satisfactory. We accordingly reject the explanation offered therein.

6. Hon'ble the Supreme Court has held in the case of **Shivamma (Dead) (supra)** that the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. The expression is to be construed with justice-oriented flexibility so as not to punish innocent litigants for circumstances beyond their control. Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so

would undermine the maxim interest reipublicae ut sit finis litium and destabilise the certainty that limitation law seeks to secure. The expression "sufficient cause" must be construed in a manner that advances substantial justice while preserving the discipline of limitation. The courts are not to be swayed by sympathy or technical rigidity, but rather by a judicious appraisal of whether the applicant acted with reasonable diligence in pursuing the remedy. Where explanation is bonafide, plausible, and consistent with ordinary human conduct, courts have leaned towards condonation. Where negligence, want of good faith, or a casual approach is discernible, condonation has been refused. We are of the opinion that these latter observations of the Hon'ble Supreme Court apply on all its fours to the facts of this case. The appellants have not acted with reasonable diligence nor is the explanation offered by them plausible and consistent with ordinary human conduct. There is negligence, want of good faith and casual approach on their part for the reasons already noticed hereinabove. Preference of such appeal with inordinate delay certainly prejudices the rights of the opposite parties under the judgment impugned herein. Therefore, this is also relevant factor to be taken into consideration in view of the judgment in the case of **Shivamma (Dead) (supra)**.

7. Hon'ble the Supreme Court has further observed that the courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the court, the inquiry is confined to whether "sufficient cause" has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly extraneous to this inquiry. If courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay. Test of "sufficient cause" cannot be

substituted by an examination of the merits of the case. Condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain. Yet another practical reason has been given by Hon'ble the Supreme Court as to why merits must not be considered at the stage of delay condonation that is it risks prejudicing the mind of the court against one party even before the matter is substantively heard. By glancing into merits prematurely, the court may inadvertently form a view that colours the fairness of the subsequent adjudication. The judicial discipline required at this stage demands that only the cause for delay be scrutinized, and nothing more. Therefore, we cannot consider the merits of the matter at this stage.

8. Hon'ble the Supreme Court has also considered as to whether there was any room for largesse for State lethargy and leisure under Section 5 of the Limitation Act. After considering various earlier decisions on the subject, ultimately, it opined that prior to the decision of '**Postmaster General v. Living Media India Ltd.**' reported in **(2012) 3 SCC 563**, the approach was characterised by judicial sympathy towards the State and its instrumentalities in matters of condonation of delay, owing to the peculiar nature of their functioning. At the same time, there also existed contrary views such as '**State of W.B. vs. Administrator, Howrah Municipality**' reported in **(1972) 1 SCC 366** and '**Lanka Venkateswarlu vs. State of A.P.**' reported in **(2011) SCC Online SC 403** which held that, irrespective of whether the litigant is a Government entity or a private individual, the provisions of limitation would apply uniformly, and any leeway shown by the courts would also remain the same. The law as it presently stands post the decision of Postmaster General (supra) as unambiguous and clear. Condonation of delay is to remain an exception, not the rule. Governmental litigants, no less

than private parties, must demonstrate bonafide, sufficient, and cogent cause for delay. Absent such justification, delay cannot be condoned merely on the ground of the identity of the applicant. Hon'ble the Supreme Court has further observed that on a combined reading of **'State of Rajasthan & Anr. vs. Bal Kishan Mathur (Dead) through Legal Representative'** reported in **(2014) 1 SCC 592** and **'Sheo Raj Singh vs. Union of India'** reported in **(2023) 10 SCC 531** it is equally manifest that the ratio of **Postmaster General (supra)** is, in essence, twofold. First, that State or any of its instrumentalities cannot be accorded preferential treatment in matters concerning condonation of delay under Section 5 of the Limitation Act. The State must be judged by the same standards as any private litigant. To do otherwise would compromise the sanctity of limitation. Secondly, that the habitual reliance of Government departments on bureaucratic red tape, procedural bottlenecks, or administrative inefficiencies as grounds for seeking condonation of delay cannot always, invariably accepted as a "sufficient cause" for the purpose of Section 5 of the Limitation Act. If such reasons were to be accepted as a matter of course, the very discipline sought to be introduced by the law of limitation would be diluted, resulting in endless uncertainty in litigation. We have perused other parts of the said judgment including para 214 and onwards.

9. In view of the above discussion, as, not only the delay is inordinate, but the same has not been satisfactorily explained, we see no reason to condone the delay in filing the appeal. No promptness or diligence was shown by the appellants in filing the appeal. Mere movement of file from one office to another is hardly an explanation. The application for condonation of delay is **rejected**, consequently the appeal stands **dismissed**.

December 19, 2025
Anand/-

(Rajeev Bharti,J.) (Rajan Roy,J.)

Digitally signed by :-
ANAND KUMAR SRIVASTAVA
High Court of Judicature at Allahabad,
Lucknow Bench