



CMP(M) No.1328 of 2022
Date of Decision: 06th November, 2025

.....Applicant/Appellant

Versus

....non-Applicant/respondent

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Applicant: Ms. Menka Raj Chauhan, Advocate.

For the Respondents: Mr. Surinder Saklani, Advocate.

Bipin Chander Negi, Judge (oral).

The present application has been filed seeking condonation of delay in filing the present appeal against the impugned judgment passed by the Courts below.

2. The appeal in the case at hand was decided by the First Appellate Court on 22.11.2019. Admittedly, the Regular Second Appeal, in the case at hand, has been filed before this Hon'ble Court on 20.09.2022, after a delay of 2 years 9 months and 16 days.

3. In the application, it has been submitted that the copy of the judgment passed by the learned First Appellate Court was received on 06.01.2020. Thereafter, a counsel had been engaged in the High Court. It has been averred that counsel in the High Court was met by the applicant in January 2020 and on account of ensuing winter vacation, he had advised the applicant to come to Shimla in the first week of March 2020.



4. When the applicant visited Shimla in March 2020, he was informed that counsel engaged is not well and is not coming to his chambers or Court. Subsequent thereto, on account of Covid Pandemic, restrictions were imposed. It is averred in the application that the applicant was informed qua enhancement of limitation on account of the Covid Pandemic. The death of the counsel who had been engaged in January 2020 had taken place on 17.03.2021. As per the case set up in the application, it is in month of July 2022 that the applicant-initiated steps for tracing his file in the office of the counsel, who had been previously engaged and subsequently died. The record of the appeal is stated to have been traced out in August 2022 and it is thereafter, that the appeal, in the case at hand was filed.

5. In reply filed by the respondent, it has been categorically averred that in pursuance to the judgment dated 22.11.2019, passed by the First Appellate Court, since, the same had not been assailed by way of Regular Second Appeal, an execution petition had been initiated. In the execution petition, which had been initiated the present applicant had been participating. In the execution proceedings, the applicant had been served for 27.11.2021, but he had not appeared on the said date. Subsequent thereto, an attachment order was passed and the same were executed on 06.01.2022, as per the report of SDO(C) Palampur, District Kangra. It is thereafter



that the applicant had put in appearance on 30.03.2022 and had moved an application for setting aside the ex parte order in the execution proceedings and the same was allowed on 21.04.2022.

6. Thereafter, the execution was listed on 22.06.2022, 23.08.2022 and on 16.09.2022. Last opportunity to file objections were granted to the applicant on 16.09.2022, failing which, opportunity deemed to have been closed on 20.09.2022. The execution proceedings were listed for consideration on 30.09.2022, 11.11.2022 and 05.12.2022 for filing list of properties. Thereafter, the matter was listed on 20.01.2023 and 11.04.2023 before the Executing Court.

7. Post-completion of pleadings in the application filed seeking condonation of delay, in filing the present appeal against the impugned judgment dated 22.11.2019, passed by the First Appellate Court issues were framed on 26.09.2023.

The same read as follows:-

- 1. Whether there is sufficient reason for condonation of delay? OPA.*
- 2. Whether the application is not maintainable? OPR.*
- 3. Whether the applicant has concealed material facts from the Court, if so, to what effect? OPR.*

8. In order to support the contention made in the application, two witnesses have been examined by the applicant, the applicant has appeared in person as AW-1 and one Sh. Sunil Kumar, Advocate, working with late Sh. Gulzar



Singh Rathore, Advocate previously engaged has deposed as AW-2.

9. In his deposition, (examination-in-chief), the applicant has stated that after passing of the impugned judgment by the First Appellate Court on 22.11.2019, the applicant had contacted an advocate at Shimla for the purpose of filing the appeal in January, 2020. The counsel had asked the applicant to come to Shimla in the month of March, 2020. When the applicant visited Shimla in March 2020, he was informed that the counsel engaged is not well and is not coming to his chambers or Court. Subsequent thereto, on account of Covid Pandemic, restrictions were imposed. Thereafter, the applicant visited Shimla in the month of March 2021, when he came to know about the demise of the Advocate engaged. The file which had been handed over to the counsel could not be traced in his office. Thereafter, fresh copies were applied. On receiving the certified copies, new counsel was contacted and the appeal was filed on 22.09.2022.

10. In his cross-examination, applicant admits handing over the entire file to the counsel engaged in January, 2020. In his cross-examination, though he denies knowledge of functioning of Courts during the Covid restrictions, however, admits that he used to visit Gumarwin Court whenever the execution filed in pursuance to the impugned judgment dated 22.11.2019 was listed in Court.



11. In so far as AW-2 Sunil Kumar, Advocate is concerned, the said counsel was working with the Advocate, who had been engaged by the applicant. In his examination-in-chief, he categorically states that from March 2020 to March 2021, he did not contact the applicant Sh. Raj Kumar. He further categorically submits that it is in December 2021 that the applicant came to meet him in his chamber after the death of the counsel. He further submits that the counsel engaged by the applicant was having his office at Vidhi Nikunj and it is only when he shifted the office of the deceased to his own chamber at Sita Bhawan near Jodha Niwas Jakhu, then the file of the applicant was traced in August 2022. He further deposed that when the office of the late counsel was shifted to his chamber at Sita Bhawan, near Jodha Niwas, Jhaku, it is then that the file of the applicant was traced in August, 2022.

12. In his cross-examination, he admits that during winter vacation, the Registry of the High Court is open for the purpose of filing. He denies as to why the counsel engaged had called the applicant after vacation. In March 2020 when the applicant visited the office of the late counsel, the said Advocate was detected with cancer and hence he could not be met by the applicant. Sunil Kumar, Advocate (AW-2) admits access to files in the office of the deceased counsel at Vidhi Nikunj. He further admits that during the period March 2020 till March 2021, files



from the office at Vidhi Nikunj were being brought to the Court by the said witness, as and when cases were listed in Court.

13. At the very outset, it would be appropriate to refer to the authoritative pronouncement of the Apex Court ***in SLP (C) No.17575 of 2023 title Thirunagalingam vs. Lingeswaran & Anr.*** decided on 13.05.2025, relevant extract whereof is being reproduced herein below;

"Further, this Court has repeatedly emphasized in several cases *that* delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet".

14. Other than the aforesaid it would be appropriate to refer to case reported ***as Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81*** for the legal propositions laid therein qua law of limitation.

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



13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property v. SBI Staff Assn., Rajender Singh v. Santa Singh and Pundlik Jalam Patil v. Jalgaon Medium Project.*)

14. In *P. Ramachandra Rao v. State of Karnataka* this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak*."

15. Admittedly, the delay in the case at hand is of 2 years 9 months and 16 days. The length of delay is immaterial. The condonation of delay is a discretionary power. Exercise of discretion must necessarily depend upon the sufficiency of cause shown and the degree of its acceptability thereof. The



expression "sufficient cause" is to be duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part (***Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81***).

16. The Court must distinguish between an 'explanation' and 'excuse'. In this respect, it would be appropriate to refer a judgment reported as **Sheo Raj Singh (deceased) through Legal Representatives & Others v. Union of India and Another, 2023 (10) SCC 531**. The relevant extract of the same are as under:

".....Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation



of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”

17. Copy of the judgment passed by the learned First Appellate Court, in the case at hand, was applied on 18.12.2019. Copy was prepared on 01.01.2020. From the endorsement made by the copying agency, it is evident that the certified copy filed is the one, which was supplied to the counsel in the first instance in January, 2020. Hence, when in his deposition the applicant states that the fresh copies were applied in 2022, the applicant is lying. In the aforesaid facts and attending circumstances, period of limitation for filing the appeal expired on 23.02.2020. In the year 2020, post winter vacation, the High Court had re-opened on 24.02.2020. Since the limitation expired during the vacation, therefore, in order to avoid the bar of limitation, appeal, in the case at hand, should have been filed on 24.02.2020. Admittedly, no Regular Second Appeal was filed on 24.02.2020.

18. As has already been stated supra, once limitation was expiring on 23.02.2020, it seems highly improbable that counsel would have directed the applicant to come in the 1st week of March, 2020 for filing the appeal. The “excuse” sought to be proffered for the delay in filing the present appeal, in this respect has been offered by the applicant to deny responsibility and consequences.



19. The plea of the applicant that the lawyer, when contacted had told the applicant that the limitation is being extended on account of Covid-19 limitation has been averred in the application seeking condonation of delay. The same is conspicuous by absence in the deposition of the applicant when he deposes as AW-1. The delay pertaining to the entire 2020-2021 is sought to be condoned on account of an illegal advice alleged to have been given by a counsel. The explanation offered in the application that the lawyer, when contacted had told the applicant that the limitation is being extended in the applicable case is not believable. Since the limitation for filing the appeal, in the case at hand, expired before commencement of Covid-19, therefore, benefits thereof cannot be extended to the applicant. Hence, the plea of the applicant that on account of Covid-19 limitation stood extended is mis-conceived. Notice in the execution proceedings was served on the applicant for 29.11.2021. Hence, the applicant was aware of the Courts functioning during the Covid-19 period. AW-2 has deposed that the High Court was functioning during the Covid-19 period.

20. AW-2 in his deposition has categorically stated that from March 2020 till March 2021, he had never contacted the applicant. Hence, there arose no occasion for AW-2 to give any advice to the applicant qua limitation being extended during Covid-19. As per the AW-2, the applicant met him in December,



2021. As per his own showing, the applicant prior to the death of the counsel had not spoken with the latter.

21. Other than the aforesaid, as per the version of the applicant in his application filed for seeking condonation of delay, became aware of the death of his counsel in June 2021. As per his deposition, he became aware of the death of the counsel in March 2021 and as per AW-2, the applicant became aware of the death of the counsel in December, 2021, when he came to meet him. Surprisingly, steps for getting his file back were however taken in July 2022. In the case at hand, the litigant has not kept track of his case despite having handed over the file to the counsel in January 2020, hence, 'want of diligence' or 'inaction' can be attributed to such a litigant. In this respect, it would be appropriate to refer to ***Katari Suryanarayana v. Koppiseti Subba Rao, (2009) 11 SCC 183 :-***

"Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent."

22. Conspicuous by absence in the application filed for condonation of delay is a detail qua the execution proceedings initiated against the applicant and participation in the same by the applicant. Adverse orders in the execution petition have occasioned the filing of the appeal belatedly after leaving the file with the counsel.



23. Much time has elapsed since the decision of the First Appellate Court. Issues settled and decided by Courts should not be sought to be disturbed after passage of sufficient time as parties must be allowed live in peace and certainty

24. In view of the aforesaid, the application is dismissed being devoid of merits.

(Bipin Chander Negi)
Judge

06th November, 2025
(Gaurav Rawat)