

(2014) 03 GUJ CK 0086
In the Gujarat High Court

Case No : Civil Application No. 2685 of 2013 in First Appeal (Stamp Number)
No. 180 of 2013

Comed Chemicals Ltd.

APPELLANT

Vs

USV Limited and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 21 Rule 90, Order 8 Rule 10
Constitution of India, 1950 — Article 136
Land Acquisition Act, 1894 — Section 18 28A 54
Limitation Act, 1963 — Section 5

Citation : (2014) 03 GUJ CK 0086

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Megha Jani, No. 1, for the Appellant; Sachin D. Vasavada and Mr. Samrat N. Mehta Advocate for the Respondent No. 1, for the Respondent

Judgement

S.G. Shah, J.—Heard Ld. Advocate Ms. Megha Jani for the applicant and Ld. Sr. counsel Mr. PC Kavina with Ld. Advocate Mr. Sachin Vasavada and Mr. Samrat N Mehta for the opponent no. 1. opponent no. 2 though served, has remained absent. Whereas opponent no. 3 is deleted by the applicant. The applicant has prayed to condone the delay of 318 days caused in filing First Appeal against the judgment and order dated 20/12/2011 passed by the City Civil Court, Ahmedabad, in Civil Suit No. 3533 of 2002. Such suit was filed by the opponent no. 1 for passing off their medicinal preparation and claiming special damages to the tune of Rs. 1 lac. By the impugned judgment, the suit was decreed in favour of the opponent no. 1 confirming prohibitory order against present applicant as well as opponent nos. 2 and 3 so as to restrain them from manufacturing, marketing and selling their product under the trademark "proloc". Original defendants are also directed to pay Rs. 1 lac by way of special damages to the plaintiff.

2. In general, law of limitation is liberal and Courts are also liberal in condoning delay. However, opponent no. 1 herein has resisted the application firmly and filed their affidavit-in-reply with certain documents to show that there was no bonafide on the part of the applicant and there is no sufficient cause for not filing the appeal in prescribed period of limitation. Therefore, the application is required to be dealt with in detail.

3. Both the parties are also relying upon citations which are in their favour.

4. Considering the reference of parties in the impugned judgment and record, it would be appropriate to refer them in their capacity before the trial Court, wherein present applicant is defendant no. 2, opponent nos. 2 and 3 are respectively defendant nos. 1 and 3 whereas present opponent no. 1 is original plaintiff.

5. The controversy is with reference to using the trademark "PROLOC" by the defendants, which is similar to the trade mark PROTOLOC" of the plaintiff. The plaintiff's case is to the effect that they are using the trade mark Protocol since May, 1994 in respect of their medicinal preparation, whereas the defendants' case is that they are registered user of the trade mark "PROLOC since 26/8/2004. The defendants have contended that they have applied for such registered trade mark on 9/7/2001. The suit as aforesaid, was filed on 9/10/2002.

6. Pending the suit before the trial Court, on 8/8/2008 advocate for the defendant no. 2 has disclosed before the trial Court by filing pursis that since defendant no. 2 has taken back the papers and brief from him, he had addressed a letter dated 24/7/2008 to defendants seeking instructions as to whether he should continue to appear for them in the suit or not, stating further that if he did not hear from the defendants, he shall be withdrawing his appearance on the next date of hearing. With such pursis - disclosure at exh. 38 on 8/8/2008, Ld. Advocate Mr. P.P. Banaji for the defendants has produced copies of the letter and acknowledgment slip on the record of the suit. The trial Court has, on such pursis, passed an order in following manner:

Urgent notices to be defendants in view of the fact that Mr. P.P. Banaji wants to retire for opponents, returnable on 21/8/2008.

The compilation produced by the applicant defendant shows that pursuant to the above order, the trial Court has issued a notice on 13/8/2008 calling upon the defendant nos. 1 and 2. However, such notices could not be served upon the defendants because it could not reach to the serving officer in time, which can be confirmed by the endorsement of Deputy Nazir of Small Causes Court, Hyderabad. It seems that it was reached to such Court on 4/9/2008 and, therefore, it was endorsed on 6/9/2008 that the notices could not be served because returnable date is 21/8/2008. It seems that such notices were forwarded by the trial Court only on 26/8/2008. Record further shows that notices were re-issued thereafter in they month of February, 2009, pursuant to

the following order dated 16/2/2009:

Ld. Advocate Mr. P.P. Banaji is present. Issue notice again to all defendants since Mr. Banaji wants to retire for defendants.

7. The applicant herein is also relying upon the Rojkam of the trial Court, typed copy of which is also produced in compilation to show that there is specific reference of order below exh. 39 in Rojkam for the date 8/8/2008 as well as reference of order dated 16/2/2009 in Rojkam of 16/2/2009. There is also specific disclosure as exhs. 41 to 43 regarding issuance of such notices initially in the month of August, 2008 and again in the month of February, 2009. However, there is no clarity either on the notices at exhs. 41 to 43 that whether such notices were served upon the defendants at any point of time or any specific endorsement in the Rojkam regarding confirmation of service or appearance of the defendants in any manner. The Rojkam shows that after issuance of notice in the month of February, 2009, the matter was adjourned either because of the request by the, plaintiff or because of non-appearance of any of the parties, but without confirming whether notices upon the respondents/defendants were serviced or not. Such adjournments are in-all 36 from March, 2009 till July, 2011. On 11/7/2011 first time the plaintiff has filed an affidavit of evidence as examination-in-chief of the plaintiff. On 29/7/2011 the plaintiff has filed pursis disclosing that they have forwarded a copy of affidavit as examination-in-chief to the defendants. However, it is fairly disclosed that same could not be served upon the defendant no. 3 since it returned unserved with endorsement "left". The copy of Rojkam shows that such pursis was recorded at exh. 56 on 29/7/2011, when matter was kept for cross-examination on 8/8/2011. However, the record shows that thereafter though the matter was listed on 8/8/2011 and though endorsement on the Rojkam is on 8/8/2011, the right to cross-examine the witness has been closed by the trial Court on 6/8/2011 by the endorsement below affidavit as examination-in-chief at exh. 55. Even if we consider the disclosure of other date as slip of pen and clerical mistake, it cannot be ignored that the date 6/8/2011 was written two times, one while endorsing the order in Gujarati and second while signing the order by the Presiding Judge. Therefore, by all probabilities, this cannot be treated as a clerical or bonafide mistake, more particularly for the reason that almost for two years the trial Court has never bothered or verified that whether notices at exhs. 41 to 43 are duly served upon the defendants and moreover by exh. 56 when the plaintiff himself is disclosing that at least envelope has been returned back unserved upon defendant no. 3 with an endorsement "left".

8. Thereby what is submitted by Ms. Megha Jani is to the effect that practically the suit has been decided in their absence and, therefore, they were not aware about the impugned judgment and decree and, hence they could not file appeal in time. Relying upon several observations and factual details from the record, she has submitted that otherwise the defendants have taken care to defend the suit and interim order and when exh. 5 was in their favour, which order was

ultimately confirmed by the High Court in Appeal From Order No. 126/2004, there is no reason for them to walk out from the judicial process so as to allow the Court to pass ex-parte decree against them. Therefore, it is submitted by Ms. Megha Jani that otherwise since interim application is in their favour and they have very good case in their favour, in absence of allowing them to pursue the appeal on its merits, they would suffer not only huge loss but grave injustice.

9. To substantiate such argument, she is further relying upon the observations in the impugned judgment by the trial Court to show that the trial Court has decreed the suit hurriedly without proper care and caution, which is required before taking any such decision. She has pointed out that though trial Court was well aware that the defendants are not present before the Court, which fact can be ascertained and confirmed from para 18 of the impugned judgment wherein the trial Court has categorically observed that the defendant side has remained absent and did not cross-examine the plaintiff's witness and that the defendants did not choose to enter into witness box nor did arguments; the trial Court has, while concluding the issues in favour of the plaintiff, in para 19, stated that such conclusion is after considering rival submissions made by both the parties. Therefore, it is submitted that practically the trial Court has over-looked the procedural law and made unnecessary haste in decreeing the suit in favour of the plaintiff, which resulted into gross injustice to them.

10. As against that, Ld. Sr. counsel Mr. Kavina for the opponent has also relied upon several factual details to show that there was negligence on the part of the applicant in not defending the suit though they have knowledge of pendency of the suit and, therefore, application is not with bonafide intention, but only with a view to delay the judicial process so as to restrict the plaintiff to utilize the fruits of decree in his favour and, therefore, delay cannot be condoned. In support of such contention, opponent is relying upon the following factual details.

10.1 It is submitted that even the application on oath for condoning delay confirms that the applicant/defendant was aware about filing of affidavit as examination-in-chief by the plaintiff-opponent. To substantiate such argument, statement in para 5 of the application; wherein it is categorically stated on oath by Mr. Akshay Sehgal, Chief Manager-HR of the applicant, as under; is relied upon:

5 The applicant states that though fresh notices were issued on the defendant on 8/8/2008 and were reissued on 17/2/2009 and though there was no endorsement about the service of such notice on the defendant no. 2, the matter proceeded on merits in absence of defendant no. 2. The plaintiff filed an affidavit of evidence in lieu of examination in chief of the plaintiff at exh. 55, and sent the same to the defendants. The defendant no. 2 forwarded such affidavit to the advocate who was engaged under a bonafide impression that the advocate was appearing for defendant no. 2. The suit was tried in absence of the defendants including defendant no. 2 and came to decided vide judgment and decree dated 20/12/2011.

10.2 In its affidavit-in-reply, plaintiff has in para 5 [f] categorically contended that when letter dated 24/7/2008 by advocate Mr. P.P. Banaji regarding his retirement as an advocate for the defendant was duly served upon the address of defendant no. 2, summons issued by the Court cannot be served on the same address within few days and, therefore, it is argued that it shows the clear intention of the defendant to avoid the service of summons and, therefore, it is not the case of negligence on the part of the advocate Mr. P.P. Banaji but defendant was negligent. Further reading of the same para, gives an impression that the plaintiff is supporting the action of the advocate of the defendant. The same story has been reproduced in para 6 [II].

10.3 Therefore, it is submitted that once the proceedings before the trial Court is well within the knowledge of the defendant, then in that case, defendant cannot take stand that second summons was not served and, therefore, it cannot be said that such decree is ex-parte decree and hence same cannot be set aside for mere irregularity and service of summons. It is further submitted that defendant was having knowledge of the suit and impugned order dated 20/12/2011.

10.4 The plaintiff has also relied upon the contents of letter dated 30/10/2010 by advocate Mr. P.P. Banaji to the defendant [Annexure-R-2-page 63 with memo of appeal] and contended that though Mr. P.P. Banaji has conveyed the defendant that he had addressed a letter on 24/7/2008 to the defendants and though such letter has been served upon the defendants, when defendants have failed to take steps, his name was deleted as advocate on behalf of the defendants. However, when Appeal From Order No. 126/2004 was taken up before this High Court on 17/9/2010 Mr. P.P. Banaji was representing present defendant. Therefore, it cannot be said that defendant was not represented by anybody.

11 Therefore, now the question which is required to be resolved in the present application is to the effect that whether applicant herein has a sufficient cause for not filing the appeal in prescribed period of limitation or not. It is certain and clear that the power to condone the delay u/s 5 of the Limitation Act is based upon the subjective satisfaction of the Court regarding sufficient cause for not filing the appeal in prescribed period of limitation. However, the phrase "sufficient cause" is not specifically defined in the Limitation Act. However, Hon"ble Apex Court has several times considered the issue regarding what is "sufficient cause". Though all such judgments are dealt with separately herein, the fact remains that the general outcome of all such previous judgments is to the effect that there cannot be straight jacket formula and definition of "sufficient cause". Thereby "sufficient cause" is to be considered relying upon the facts and circumstances of each case in the background of situation and position that may be emerges from the record and it cannot be predefined, based upon any particular decision by any Court.

11.1 The other grounds for consideration of condonation of delay would be attitude and vigilance of the litigant in pursuing their legal rights by proper manner in the present litigation.

12. Therefore, if we consider the above both aspects from the facts and circumstances that emerges from the record, then irrespective of rival claims, what transpires and what is the outcome of factual details referred by both the sides and discussed hereinabove are to the following effect.

[a] It is not disputed that defendant has not only appeared in the suit through learned advocate Mr. P.P. Banaji, not before the trial Court but also before the High Court.

[b] It is also not disputed that on 17/9/2010 when Appeal From Order No. 126/2004 was disposed of [after six years], though name of Mr. P.P. Banaji is shown for respondent no. 2 in the cause title, the fact remains that the Court has not recorded his presence and practically appeal was disposed of on submission by the learned advocate for the appellant that when proceedings of the suit were not stayed and when there is no injunction in favour of the plaintiff, and when subject matter of the suit is "passing of", the appeal can be disposed of with a direction to the trial Court to complete the hearing and render the decision of the suit proceedings as expeditiously as possible, preferably within a period of nine months from the date of receipt of such order. Therefore, practically, only because name of Mr. P.P. Banaji was shown for respondent no. 2 in such order, because of mere technicality of disclosing names of learned advocates appearing for the parties in the cause title, it cannot be said that Mr. P.P. Banaji was very well present on that date.

[c] The condition regarding information or intimation both by Mr. P.P. Banaji by forwarding letter dated 24/7/2008 and by plaintiff regarding sending affidavit for examination-in-chief is concerned, the fact remains that practically there was no service of such letters to the applicant defendant because its address was changed at the relevant time. Such fact can be confirmed from letter dated 30/10/2012 by Mr. P.P. Banaji to the applicant/defendant, which is referred hereinabove, wherein it is categorically stated that "your postal address also seems to have been changed, as all my letters addressed to you at "3rd floor, Orient Business Centre, Sayaji Ganj, Vadodara-390005".

[d] Similar disclosure is there by the plaintiff itself, while submitting pursis at exh. 26 on the record of the trial Court that their affidavit of evidence in lieu of examination-in-chief, since the Rojkam dated 29/7/2011 specifically confirms that chief sent to opponent nos. 1 and 2 and produced today and opponent no. 3 returned unserved with cover "left".

[e] Therefore, it cannot be said that all the communication are properly served upon the applicant/defendant and even thereafter he remained absent in the proceedings.

[f] So far as allegations regarding non-service of notice at the same address when letter dated 24/7/2008 was served, has also no force since from the endorsement of the bailiff on the unserved notice returned back to the trial Court, which is discussed hereinabove, makes it clear that the bailiff could not

serve the notice at the given address because the returnable date has been over. Thereby it is clear that bailiff has never tried to serve fresh notice upon the respondents. Therefore, it cannot be said that though notice by advocate was served, notice by Court could not be served at the same address to highhandedness of the applicant/defendant or that they had intentionally avoided the service of notice.

13. As against that, if we peruse the orders of the trial Court below application exh. 39 dated 8/8/2008, it becomes clear that the trial Court has endorsed the disclosure by learned advocate Mr. P.P. Banaji regarding deletion of his name from the record. It is also clear that in the same disclosure, learned advocate Mr. P.P. Banaji has requested the Court to issue fresh notice upon the respondents and in turn by order dated 8/8/2008 the Court has issued fresh notice and when such notice was not served for want of time, another order was passed on 16/2/2009 to issue notice against all defendants returnable on 13/3/2009.

14. Therefore, now it was obligatory on the part of the trial Court to be careful and vigilant before passing any order, judgment and decree to verify that notices pursuant to order dated 8/8/2008 and 16/2/2009 are properly served or not.

15. To avoid confusion, it is made clear that all such factual details and observations are with reference to present applicant original defendant no. 2 only, inasmuch as there are some different endorsement so far as notices forwarded to original defendant no. 3. However, we should not confuse ourselves with endorsement below notices upon respondent no. 3 since opponent herein has tried to rely upon some such endorsements.

15.1 Even the trial Court has failed to take care of the proceedings in proper manner inasmuch as though it is discussed hereinabove, but at the cost of repetition, it is to be recollected here that though the trial Court has specifically observed in para 18 of the impugned judgment that defendant side remained absent and did not cross-examine plaintiff's witnesses, not only that but defendant did not choose to enter into witness box too, nor did any argument; in para 19 it was stated by the Court that it has come to such conclusion considering rival submissions submitted by both the parties. Similarly though retirement of learned advocate Mr. P.P. Banaji as per exh. 39 is recorded during the proceedings of the suit, in part of appearance, on 1st page of the impugned judgment, name of Mr. P.P. Banaji is shown as an advocate for defendant nos. 1 to 3. This is because of similar practice of disclosing names of advocates who have filed their Vakalatnama, from the database of particular case. For the purpose, it is necessary to request the Registrar [Judicial] to convey all Courts and concerned branches which are making data entry to be more vigilant and careful by rectifying and/or modifying the database without fail so as to see that names of only relevant advocates are disclosed in the database.

16. As against above observation, only two points need scrutiny and consideration.

[i] Statement by the applicant/defendant itself on affidavit that the plaintiff has sent a copy of examination-in-chief and in turn they have sent it to their advocate in bonafide that they are represented by the same advocate before the trial Court. No-doubt, such pleadings may lead conclusion that there was knowledge to the defendant about pendency of the suit and thereby it was their duty to chase the matter and to defend it properly.

[ii] If at all the applicant/defendant has changed address, it was its duty to convey both, to the Court as well as to their advocate at the earliest to avoid such situation.

17. However, looking to the over-all facts, details and circumstances as well as applicable case law, it cannot be said that such lacuna on the part of the applicant/defendant goes to the root of the matter to hold and conclude that defendant is grossly negligent or that he is not vigilant and diligent in protecting his rights and thereby there is no sufficient cause to condone the delay. It cannot be ignored that, even if, as argued by Ld. Sr. Counsel Mr. Kavina, we need not to look into the merits at this stage, the prima-facie case was very well in favour of the applicant/defendant and they have not only protected their rights by resisting the entire application for stay before the trial Court, but they have also taken care of their rights in Appeal From Order before this Court also and when interim order is in their favour, there is no reason for them to remain away from the litigation when their case is prima-facie believed--by the Court. Therefore, both the lacuna as listed hereinabove, do not confirm that solely on that ground the delay can never be condoned or that they are sufficient enough to deny condonation of delay.

18. As against that, it is submitted by the respondent/plaintiff that there is no prompt steps taken by the applicant/defendant in challenging the impugned judgment and decree since they have not called for the certified copy in time and since they have not disclosed the details of passing off in their reply. It is also stated that no notice is required to defendants once they are duly served and, therefore, there is nothing wrong in the impugned judgment by the trial Court.

19. So far as the number of days of delay is concerned, it is specific case of the applicant/defendant that they came to know about decree against them only when they received a letter dated 27/9/2012 by the plaintiff's advocate, though the suit was decreed on 20/12/2011. It is obvious that the impugned judgment is in the form of prohibitory order against present applicant/defendant restraining them from manufacturing, marketing, selling and using particular trade mark, therefore, it is difficult to believe that the plaintiff had waited for almost nine months before restraining the defendants from utilizing the trade mark in question. It goes to show that the plaintiff wants to let go the period of limitation for filing an appeal before intimating the outcome of the judgment. Therefore, if attitude of the defendant is to be looked into, then attitude of the plaintiff is also required to be considered so as to arrive at the judicial decision between the parties. It cannot be ignored that as per endorsement on the Rojkam dated

8/8/2008, the order of issuing fresh notice was passed below exh. 1 also and, therefore, in absence of service of notice upon the defendants, suit should not have been decided on its merits and if it is decided without service of notice, then certainly such judgment could be termed as an ex-parte judgment and in that case, period of limitation would start only from the date of intimation of such judgment and not from the date of judgment itself.

20. At present we are not entering into the merits and demerits of the main dispute regarding trade mark. However, it cannot be ignored that when prima-facie case is in favour of the applicant/defendant and when notice of motion in a suit of the year 2002 was dismissed in the year 2004 and thereafter when Appeal From Order No. 126/2004 was disposed of by order dated 17/9/2010 without any interim relief against the present the applicant/defendant, it cannot be said that the applicant/defendant does not have a prima-facie case. If it is so, there is no reason for them to delay the judicial process. Thereby there is no ulterior motive or malafide on the part of the applicant/defendant in not appearing before the Court when suit was decided in their absence.

21. The intimation by the advocate of the plaintiff dated 27/9/2012 does not make it clear that the suit was decided in their absence, but states that since they have not received any notice of the appeal, they presumed that the applicant/defendant has accepted the verdict of the Court and thereupon called upon the applicant to pay the decretal amount.

22. Story in between regarding communication between the parties and advocates are not much material, which is simply and purely in the nature of legal advice by an advocate to its client. However, even if we look into such communication dated 28/10/2010, there is nothing wrong if Mr. PP Banaji has advised to the applicant to file First Appeal with condonation of delay in filing such appeal. It cannot be ignored that if such letter is considered in toto and it is required in any case, it also confirms that Mr. Banaji has retired as an advocate for the applicant/defendant and that there is some change in the address of the applicant/defendant and thereby, service of letters cannot be confirmed.

23. The Learned Advocate for applicant is relying upon following decisions in support of her submission that delay may be condoned:

I] Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, , wherein the Hon"ble Apex Court has observed and held as under:

While considering the application for condonation of delay no straitjacket formula is prescribed to come to the conclusion that whether sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter. The delay has not been so huge warranting its dismissal on such hyper technical ground. In fact the appellant had taken all possible steps to prosecute the matter within time. Had there been an

intimation sent to the appellant by its erstwhile advocate, and if even thereafter the appellant had acted callously then the negligent attitude of the appellant could have been understood but that was not the case here. No sooner the appellant came to know about the dismissal of its objection filed before the executing court, it made enquiries and filed the appeal. The appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation. The delay was also not that huge, which could not have been condoned, without putting the respondents to harm or prejudice. It is the duty of the court to see to it that justice should be done between the parties. Unless mala fides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it out on such technicalities.

Hon"ble the Apex Court was dealing with the prayer to condone the delay of 348 days by the trust on the ground that its advocate did not appear before the Court on given dates, when Court had passed the order regarding confirmation of auction. The matter was chased by the trust before District Court and High Court in different proceedings and then Apex Court, where it was contended that the appellant had been contesting the matter in right earnest right from the very beginning and had implicit faith and confidence in his Advocate, who had been appearing for the appellant not only in this case but in several other cases. According to him there was no reason to doubt that he would not appear on various dates of hearing and then would not even inform the appellant about the progress of the case. In other words, it has been contended that whatever best was possible to be done by the appellant that had been done, therefore even though there has been some delay, on account of non-communication of the passing of the impugned order challenged in appeal, delay should have been condoned and the matter should not have been thrown at the threshold.

Thereby the Hon"ble Apex Court has condoned the delay subject to payment of cost of Rs. 50,000/- in the year 2010 i.e. after 18 years as the auction in question was confirmed in the year 1992 and though contesting respondent had deposited an amount of Rs. 22,65,000.00 in the year 1992 but could not get any fruits thereof till the year 2010 and matter was remitted to the executing court for deciding the appellant's application filed under Order 21 Rule 90 CPC at an early date on merits, i.e. clock was reversed back to 18 years. Hon"ble the Apex Court has held that after all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose of it on such technicalities and that too at the threshold.

The facts of the cited case and case on hand are almost similar that condonation of delay is sought for due to non appearance of the advocate, who was engaged by the party, before the Court on actual date of active hearing and when he failed to convey the result of the litigation to his client well in time. In present case even if we consider that no fresh notice was necessary when the advocate

represents the defendant, this decision makes it clear that even than the nonappearance of advocate on the given date is sufficient cause for condoning delay. Where as factually in present case the trial court has accepted that any advocate does not represent defendant and hence fresh notice was issued, but before service of such notice, trial was completed in favour of the plaintiff. It is pertinent to note that notice could not serve because of short date and unfortunately trial judge has stated in the judgment that he decide the suit after considering rival submission, though there was observation that defendant has failed to cross examine the plaintiff and also to adduce its evidence and final submission arguments. Thus trial Court has certainly erred in deciding the suit ex parte without offering reasonable opportunity to the defendant to prove his case. It is also pertinent to recollect that otherwise defendant/applicant was vigilant in defending the injunction application and Appeal from order where in it has succeeded and therefore there is no reason for it to remain away or to delay the judicial process.

2] Dakshin Gujarat Vij Company Ltd. Vs. Amardeep Association and Others, by the Division Bench of this High Court, where in after detail discussion of relevant judgments delay of 865 days was condoned. Such judgment was challenged before the Hon''ble Apex Court in Petition for Special Leave to Appeal (Civil) No. 12142/2013, but the Bench of Three Judges of the Hon''ble Apex Court has dismissed the petition. Thereby judgment and order dated 08/02/2013 in CA No. 13520 of 2012 in LPA (stamp number) No. 1531/2012 in SCA No. 21824 of 2006, i.e. reported case under reference, has become final and approved by the Hon''ble Apex Court. In this judgment, after referring in all 9 cited decisions where delay was not condoned, the Court come to the following conclusion-

The sum and substance of all above decisions cited by the opponent No. 1 makes it clear that there cannot be a straitjacket formula or rule either for condonation of delay or to reject the condonation and that every case is to be decided considering the facts and circumstances of that case only. The only requirement for condonation of delay is that whether there is sufficient cause for the litigant not to initiate the litigation in prescribed time of limitation. In all the cases cited above, there is either inordinate delay, which was never explained or there was misrepresentation or fraud and, therefore, the Apex Court has held that in such cases, delay cannot be condoned. However, it cannot be ignored that in almost all such judgments, the Apex Court has categorically observed and held that if sufficient cause is shown, delay can be condoned and that term sufficient cause is elastic enough to enable the Courts to apply the law in a manner which subserves ends of justice and that there cannot be hard and fast rule laid down for condonation of delay.

3] Shantilal Gulabchand Mutha Vs. Tata Engineering and Locomotive Company Ltd. and Another, wherein para 4 was referred which reads as under:

This Court in Balraj Taneja and Another Vs. Sunil Madan and Another, dealt with the issue and held that even in such fact-situation, the court should not act

blindly on the averments made in the plaint merely because the written statement has not been filed by the defendant traversing the facts set out by the plaintiff therein. Where a written statement has not been filed by the defendant, the court should be little cautious in proceeding under Order VIII, Rule 10, CPC. Before passing the judgment against the defendant it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement.

24. As against that opponent is relying upon following decisions:

1] Mahanagar Telephone Nigam Limited Vs. State of Maharashtra and Others, wherein the Appellant-MTNL filed writ petition after 37 years of initiation of the acquisition proceedings and 28 years of the pronouncement of award, for a writ of mandamus to direct Respondents to hand over vacant possession of the land ad-measuring 5723.10 sq. mtrs., situated at Mahim bearing FP No. 1088 TPS-IV. Since one of the respondent-the Slum Development Authority itself has indicated in the scheme itself, that the built up area admeasuring 1706 sq. mtrs., is to be handed over to MTNL, disposing the writ petition, the High Court held that no prejudice would be caused if Respondent No. 5 is directed to hand over the built up area of 1706 sq. mtrs., to MTNL free of costs and direct the Respondent No. 5 to hand over the above built up area to MTNL. It is further stated that since the MTNL has been allotted only built up area ad-measuring 1706 sq. mtrs., we are not called upon to examine the claim of 5723.10 sq. mtrs., made by the Petitioner-MTNL in this petition. Any further claim of the Petitioner-MTNL with regard to additional built up area, the Petitioner-MTNL will be entitled to get the same adjudicated by the appropriate authority.

However after having virtually agreed to take 1706 sq. mtrs., built up area free of cost, the Appellant (MTNL) filed this SLP questioning the order of the High Court. It also filed an application for condonation of 401 days" delay in filing SLP.

In above [background, after referring series of correspondence between different authorities/officers and their advocates, Hon"ble the Apex Court has found that, with a view to keep the Court in dark about the correspondence on the issue of allotment of 1706 square meters of built up area by Respondent No. 5 to the Appellant free of cost, the concerned officer made a patently incorrect statement that order dated 13.8.2010 was not brought to the knowledge of the Senior Management of the Appellant by Mr. V.T. Dhere. Therefore after relying upon some other similar cases, Hon"ble Apex Court has held that by applying the ratio of the above noted judgments to the facts of this case, the Appellant is guilty of not coming to this Court with clean hands and the explanation given by it for 401 days" delay has to be treated as wholly unsatisfactory and the prayer for condonation of delay is liable to be rejected. Thereby the delay of almost 3

decades was considered as stares on the face of the Appellant and therefore Hon"ble Apex Court could not find any justification for entertaining the prayer for issue of a mandamus at such belated stage by ignoring the developments which have taken place in the intervening period.

Therefore the Hon"ble Apex Court has relied upon the settled legal position that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice and if the Appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct; he is not entitled to equitable relief when he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, and that the court not only has the right but a duty to deny relief to such person.

Whereas in the present case, applicant has not suppress any such fact which can be said to be concealment of material facts or making an attempt to pollute the pure stream of justice or intends to delay the proceedings. Therefore only because Hon"ble Apex Court has not condone the delay of 401 days in a litigation where in question raised is 3 decades old, mainly on the ground that there is concealment of material facts, in absence of such facts on hands this decision could not apply to the present case. On the contrary, if we look in to the facts, it becomes clear that Bombay High Court has allowed the writ petition partly, though it was filed after 3 decades, when there is admission by some respondent. Thus the issue of limitation is to be considered with facts and circumstances of each case and there cannot be straight jacket formula regarding consideration of sufficient cause for not filling the litigation in prescribed period of limitation.

2] Popat Bahiru Govardhane etc. Vs. Special Land Acquisition Officer and Another, wherein the High Court has upheld the judgment of the Land Acquisition Collector rejecting the application u/s 28A of the Land Acquisition Act, 1894 on the ground of limitation. After referring few judgments, based upon the Land Acquisition Act and limitation Act only, Hon"ble the Apex Court has observed and held as under:

[12] In view of above, there is no occasion for us to consider the judgments cited at the bar on behalf of the appellants in support of its case. More so, the said judgments have been delivered by this Court while dealing with the applications u/s 18 of the Act. If there are directly applicable precedents on the issue, the same have to be followed rather than to search for a new interpretation unless it is established that the earlier judgments"" require reconsideration. The suggestion of reconsideration has specifically been rejected by this Court in Marri Venkaiah.

[13] 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. 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. "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.

(See: Martin Burn Ltd. Vs. The Corporation of Calcutta, and Rohitash Kumar and Others Vs. Om Prakash Sharma and Others,

In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable.

However the scrutiny of the decision makes it clear that the Hon"ble Court has considered that as the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application u/s 28A, LA Act, has to be filed within the period of limitation as prescribed u/s 28A, LA Act.

If we peruse all the judgments referred by the Apex Court, it becomes clear that most of them are with reference to the land acquisition cases and therefore, they are not much relevant at present. Whereas the case of the Martine Burn Ltd. (supra) does not deal with the issue of condonation of delay. Whereas case of Rohitash Kumar (supra) is interpreting, in general, the word "hardship" stating that it should not be the basis to enter meaning of plain language of statute. Thereby even if a statutory provision causes hardship to some people, the court should not amend the law.

There cannot be dispute to such legal proposition but such propositions are not applicable in the present case and only because of such proposition, it cannot be said that there is no sufficient cause in all the cases when delay is requested to be condoned.

However the same Bench of the Hon"ble Apex Court has even after referring the said decision, when there was a delay of 5-1/2 years in filing the appeals u/s 54 of the Act before the High Court with the only explanation offered for approaching the court at such a belated stage has been that one of the appellants had taken ill, did not condone the delay, on the same day i.e. 22 August, 2013 but observed as under in the case of Basawaraj and Others Vs. The Spl. Land Acquisition Officer,

9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the

word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, 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 in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, ; Mata Din Vs. A. Narayanan, ; Parimal Vs. Veena @ Bharti, ; and Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai,

10. In Arjun Singh Vs. Mohindra Kumar and Others, this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or [not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal Vs. Shyamlal, and Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others,

Thus what is held is that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and that Court has no power to extend the period of limitation on equitable grounds, Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation and that 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, when a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the sufficient cause which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

However this judgment would not help the opponent to succeed in its submission

that delay should not be condoned even if sufficient cause is there, only because law permits to deny condonation even as a harsh step.

25. At the same time following principals cannot be ignored while dealing with the issue of condonation of delay in such cases:

1) Delay should be condoned to do substantial justice but without resulting in injustice to other party. Thus balance has to be kept in mind by Court while deciding such applications. It is difficult to state any straitjacket formula that can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. Thereby liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on part of the applicant, to whom want of bona fide is imputable. The expression "sufficient cause" implies the presence of legal and adequate reasons. *Balwant Singh (Dead) Vs. Jagdish Singh and Others*,

2) Unless explanation furnished for delay is wholly unacceptable or if no explanation whatsoever is offered or if delay is inordinate and third party rights had become embedded during interregnum, courts should lean in favour of condonation. *State of Rajasthan and Another Vs. Bal Kishan Mathur (D) through L.Rs. and Others*,

3) When ex parte decree suffers from non-application of mind, the statute obligated upon the court of law to examine that whether plaintiff has proved his case or not and thereby disposal of appeal on limitation was reversed.- *Bogidhola Tea and Trading Co. Ltd. and Another Vs. Hira Lal Somani*,

4) Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. *S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others*,

5) When there is various deficiency in the impugned judgment and decree passed by the trial court, condonation of delay of 2487 days by High Court and remitting the matter back to the trial court for disposal in accordance with law has been upheld by the Apex Court.- *C.K. Prahalada and Others Vs. State of Karnataka and Others*,

6) Rejection of appeal because of delay of 992 days by First Appellate court was

reversed by the High Court and confirm by the Supreme Court. Thereby delay of 992 days in filing first appeal was condoned.

Devineni Padmaja Vs. Vundavalli Srinivasa Rao,

7) The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by. Since "sufficient cause" has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter.

8) The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words where circumstances justifying the conduct exist, the illegality, which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. (Paras 10, 11, 12) Ultimately it was held that the High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. *Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*, *Tukaram Kana Joshi v. M.I.D.C.*

9) If sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, .

10) It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned, as the explanation thereof is satisfactory. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. 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 mala fides 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 the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite 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. N. Balakrishnan Vs. M. Krishnamurthy,

11) But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilant disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way. Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others,

12) There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate the matters should be heard on merits rather than shutting the doors of justice at the threshold.- S. Ganesharaju (D) Thr. L.Rs. and Another Vs. Narasamma (D) Thr. L.Rs. and Others,

13) The amplitude, ambit and width of the rule of audi alteram partem was lucidly stated by the three-Judge Bench in the following words:

11..... This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties." - Sayeedur Rehman Vs. The State of Bihar and Others,

14] Exercise of judicial discretion of Court shall be allowed if there is no presumption that delay is occasioned deliberately or on account of culpable negligence. Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others,

26. The sum and substance of all decisions is clear that there cannot be a straitjacket formula or rule either for condonation of delay or to reject the condonation and that every case is to be decided considering the facts and circumstances of that case only. The only requirement for condonation of delay is that whether there is sufficient cause for the litigant not to initiate the litigation in prescribed time of limitation. In all the cases cited above, there is either inordinate delay, which was never explained or there was misrepresentation or lack of sufficient cause and, therefore, the Apex Court has held that in such cases, delay cannot be condoned. However, it cannot be ignored that in almost all such judgments, the Apex Court has categorically observed and held that if sufficient cause is shown, delay can be condoned and that term "sufficient cause" elastic enough to enable the Courts to apply the law in a manner which subserves ends of justice and that there cannot be hard and fast rule laid down for condonation of delay.

27. As against that, if we look into the following judgments, it becomes clear that generally Courts should be reluctant to shut out a consideration of the case on merits on the grounds of limitation or any other similar technicality Abdul Ghafoor and Another Vs. State of Bihar, if there is delay in filing petition, due to opinion of the advocate on record and the Solicitor General etc., such delay deserves to be condoned Delhi Development Authority Vs. Bhola Nath Sharma (Dead) by L.Rs. and Others, there is a strong arguable case on behalf of the appellant and, therefore, the Court should decide the matter on merit by giving the expression sufficient cause a pragmatic justice-oriented approach Union of India (UOI) Vs. Giani, the meaning of the word sufficient is adequate or enough, inasmuch as may be necessary to answer the purpose intended and, therefore, word sufficient embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose. Sufficient cause is a question of fact and the Court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application Parimal Vs. Veena @ Bharti, if case file has to be routed from various departments before decision to file appeal, it is sufficient cause for condonation of delay State of Jammu & Kashmir and Others Vs. Mohmad Maqbool Sofi and Others, while deciding application for condonation of delay, Court cannot go into the merits of the case, if averments made in the application is sufficient to condone the delay, there is no hesitation to condone such delay State of Jharkhand and Others Vs. Ashok Kumar Chokhani and Others, the expression sufficient cause must receive liberal construction to advance substantial justice even condoning delay of more than 6500 days when question of law involved State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others, and what counts is not length of delay, but sufficiency of cause and that

what constitutes sufficient cause cannot be laid down by hard and fast rules State (NCT of Delhi) Vs. Ahmed Jaan, delay of more than six years can also be condoned to avoid miscarriage of justice O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, by 3 Judges bench of Apex Court).

28. Moreover, at-least in Sainik Security Vs. Sheela Bai and Others, D.D. Vaishnav Vs. State of M.P. and Others, and Commissioner Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara and Another, the Apex Court has condoned inordinate delay (769 days, 589 days and 178 days respectively) even by imposing some costs upon the applicant.

29. Whereas in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Apex Court has held as under-

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

[1. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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.]

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to

benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

30. In the case of Esha Bhattacharjee (Supra) recently Hon"ble the Apex Court has, after referring several previous decisions, again carved out certain criteria for consideration of the issue regarding condonation of delay in following words:

15. From the aforesaid authorities the principles that can broadly be culled out are:

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 encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side

unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of 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 harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

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 nonchalant manner requires to be curbed, of course, within legal parameters.

31. If we scrutinize all referred citations, where condonation of delay was refused, it becomes clear that the delay was not condoned mainly for the reason that either there is false statement by the applicant or the cause for delay was shown as loss of paper by the advocate or the main dispute is falling under Special Legislature like Land Acquisition, Rent Control or Arbitration or Consumer Dispute. Though in some cases, dispute falls within General Law, the second aspect for non-condoning the delay is actual delay in number of days, which is more than 1000 days in 5 cases, out of total 8 cases. Unless there is a similar situation i.e. unless the case in hand falls within a special enactment or there is inordinate delay beyond couple of years, none of such judgment confirms that delay cannot be condoned even if sufficient cause is shown, more particularly because of the reason that all such judgments are by the Division Bench only and in none of such judgments, any of the citations prior to the referred judgments, were ever overruled or distinguished or even referred and not followed in any of the case.

32. As against that, if we scrutinize all the judgments, it becomes clear that some judgments are referred amongst different judgments within them so as to

decide that the delay can be condoned if sufficient cause is shown. Whereas atleast decision in O.P. Kathpalia Vs. Lakhmir Singh (Dead) & Ors. (supra) is by the three Judges bench of the Apex Court wherein delay of more than 6 years was condoned observing that otherwise it would result into miscarriage of justice. Therefore, when there is a judgment by the bench of three Judges of the Apex Court that to avoid miscarriage of justice, delay of even 6 years can be condoned and when such judgment is yet not overruled or distinguished in any of the later judgment by the Bench of three Judges, only because the Apex Court has not condoned the delay in some of the cited cases, it cannot be said that delay cannot be condoned in all cases after such judgments even if there is sufficient cause to condone the delay. Thus, in general, if there is sufficient reason to condone the delay, irrespective of the cited cases, delay can be condoned.

In view of the above facts detailed and discussion, it has been clear that the applicant has a cause of action to file the First Appeal in view of the facts and circumstances of the case, more particularly when applicant could not get a chance to defend the suit and when even though trial court has issued fresh notices to defendants, while deciding the suit trial court has failed to verify that defendants are served with the notice or not and when trial court has without application of mind observed in the impugned judgment that it has considered the submission of both sides, though defendants were absent and when applicant defendant has otherwise defendant the litigation without any delay or tactics and when advocate for the applicant had resigned himself from the litigation and when plaintiff had conveyed the decision by a notice after 11 months only; though there may be some negligence on the part of the applicant, such negligence does not fit in to the category of "gross negligence" or "lack of bona fide" or "unreasonableness" or "fraud, misrepresentation or interpolation" or taking disadvantage of such provision by the applicant. Though there may be some contradiction, it can be considered as communication gap, misunderstanding or bona fide belief on the part of the applicant that concern advocate is representing them before the Court.

Therefore, the reasons shown by the appellant for condonation of delay are good enough and sufficient. It appeals to this Court to condone such delay considering the overall aspect of the matter. Therefore, if impugned order is confirmed by denying condonation of delay, there would be either multiplicity of litigation or there would be differential treatment because of different judgments. In view of above facts and circumstances, it cannot be said that applicant was negligent in dealing with the pending litigation against him and that it had tried to take any disadvantage by not filing appeal in time or that there is any malafide intention. At the same time, the reasons explained by the applicant are seems to be sufficient cause for not filing the appeal in time. Thus the statement in the application for condonation of delay and in rejoinder affidavit, do constitute sufficient cause to condone the delay.

Examination on the touchstone of the afore-noted observations, I am of the view that in the present case, the conduct of the applicant does not indicate inaction, negligence or mala fides. The explanation furnished for delay of 318 days, in my opinion, constitutes a sufficient cause and therefore, deserves to be accepted.

In view of the aforesaid, I am of the opinion that considering over-all facts and circumstances wherein the applicant/defendant was not represented before the trial Court, which results into an ex-parte decree against it and, therefore, filing of appeal after knowledge of such decree, with an application of condonation of delay is certainly bonafide attempt and it cannot be said that the applicant/defendant has failed to or neglected in protecting its rights before the trial Court. When they have protected their right in Appeal From Order till this High Court, there are sufficient cause for not filing appeal in time. I am also of the opinion that in such matters, J explanation of day to day delay is not material and hence delay of 318 days caused in filing the First Appeal deserves to be condoned. Therefore, Civil Application is allowed, as prayed for. Thereby delay of 318 days caused in filing First Appeal is hereby condoned. Rule is made absolute.