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**(2011) 12 AHC CK 0405**  
**In the Allahabad High Court**  
**Case No : Service Single No. 8663 of 2011**

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| Deependra Prakash Tiwari | Vs | APPELLANT  |
| State of U.P. and Others |    | RESPONDENT |

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**Date of Decision :** 05-12-2011

**Acts Referred:**

**Citation :** (2011) 12 AHC CK 0405

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Hon"ble Anil Kumar, J.—Heard Sri Brijesh Kumar, learned counsel for petitioner and learned State counsel.

2. By means of the present writ petition, the petitioner has challenged the impugned order dated 03.12.2005 (Annexure No. 1) passed by Commissioner, Faizabad Division, Faizabad/O.P. No. 3.

3. Learned State counsel raised a preliminary objection to the effect that as the petitioner has challenged the impugned order dated 03.12.2005 (Annexure No. 1) passed by Commissioner, Faizabad Division, Faizabad/O.P. No. 3, so the present writ petition liable to be dismissed on the ground of delay and laches.

4. Sri Brijesh Kumar, learned counsel for petitioner in rebuttal rely on the affidavit (by himself) filed in support of application for condonation of delay in filling the present writ petition, which is filed separately in the instant matter and submits that in view of the facts stated therein the delay in filling the present writ petition may kindly be condoned.

5. I have heard learned counsel for parties and perused the record.

6. After taking into consideration the facts stated in the affidavit filed (by the learned counsel for petitioner himself) and taking into consideration the law as laid down by Hon"ble the Apex Court in the case of Kanaiyalal Lalchand Sachdev

and Others Vs. State of Maharashtra and Others, after placing reliance on its earlier judgment in the case of City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, wherein held as under:-

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

7. Further, in the case of M/S Royal Orchid Hotels Limited and another Vs. G. Jayarama Reddy and others, JT 2011 (11) SC 346 where Hon"ble the Apex Court after placing reliance on its earlier judgment in the case of BADLU AND ANR. v. SHIV CHARAN AND ORS., (1980) 4 SCC 401 and in the case of M/s Concord of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , held that "where a party under a wrong advice given to them by their lawyer was pursuing an appeal bonafide and in good faith in wrong Court, held that the time taken for such prosecution should be condoned and took exception to the order of the High Court in dismissing the second appeal. The delay caused on account of the mistake of counsel can be sufficient cause to condone the delay."

8. For the foregoing reasons, application for condonation of delay is in filling the present writ petition is allowed. Delay is condoned.

9. Learned State counsel is granted four weeks time to file counter affidavit, rejoinder affidavit, if any, be filed within two weeks thereafter.

10. List thereafter.