

(2013) 09 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 153 of 2013

Jahed Naziruddin, Sajed Naziruddin, Sadique Arifoddin and
Javed Razioddin

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9(3)
Constitution of India, 1950 — Article 120, 121, 226
Limitation Act, 1963 — Section 5

Citation : (2013) 6 ABR 573 : (2014) 2 ALLMR 58 : (2013) 6 BomCR 344 :
(2014) 2 MhLj 933

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; T.S. Lodhe, A.G.P. for State, Shri. V.D. Salunke, Advocate for Respondent No. 9, Shri. S.P. Joshi, Advocate for Respondent Nos. 7 and 10, Shri. Ajay Shinde, Advocate for Respondent Nos. 4 and 6, Shri. A.R. Kale, Advocate for Respondent Nos. 2 (I) to (III), 2(ii) and (iii), 3, 5 and 8 and Shri. S.G. Jadhavar, Advocate for Respondent No. 11, for the Respondent

Judgement

S.S. Shinde, J.—This writ petition is filed challenging the judgment and order dated 10.08.2012 passed by the Divisional Commissioner, Aurangabad in Inam Appeal No. 2/1997.

By the impugned judgment and order, the Divisional Commissioner, Aurangabad, rejected the application for condonation of delay in filing the appeal. There is no adjudication by the Divisional Commissioner, Aurangabad, on merits of the appeal.

The learned counsel appearing for the petitioners submits that, the genesis of the litigation commenced with the application filed by respondent nos. 2 to 9 herein before the District Collector (Land Reforms), Beed. It is the contentions of the learned counsel for the petitioners that, the petitioners raised several

objections in their written reply about locus of the applicants to file the application before the District Collector (Land Reforms), Beed, and also the point of limitation. So also, objection is raised on the point that inherent nature of lands being a service inam lands, it is not abolished and therefore, Hyderabad Abolition of Inams and Cash Grants Act, 1954 is not applicable. Consequently, occupancy cannot be granted since exemption from tenancy is provided under the statute. The nature of inam is determined under Hyderabad Atiyat Inquiries Act, succession proceedings of their predecessor and it is final since not challenged by the respondents herein i.e. applicants in said proceedings. However, inspite of raising the aforesaid points before the Deputy Collector (Land Reforms), Beed, none of the points have been considered by the said authority.

2. It is further submitted that, by the respondent nos. 2 to 9 herein, before the District Collector (Land Reforms), Beed, a claim was set out in respect of agricultural lands S. Nos. 180, 181 and 183 situated at Ambajogai, Dist. Beed and determination of nature of Inam of the said land u/s 2(A) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 being community service in Inam and further claiming declaration of occupancy of the land u/s 6 of the said Act. The learned counsel appearing for the petitioners submits that the three lands referred above are Mashrut Khidmat Inam lands. Under Muntakhab No. 1131 of 1300 Fasli, succession of said lands is granted to the successors of original inamdars Majarudisha Humaunisha resident of Hyderabad. The lands were granted to original Inamdar to render services of Mohatsabi and Masfi. The petitioners are the successors of original inamdars. The inherent nature of the inams referred above being a service to the institution needs to be classified as service inams and consequentially are not covered by the application of Hyderabad Abolition of Inams and Cash Grants Act, 1954. The succession of the service inam lands is required to be determined in accordance with the provisions of the Hyderabad Atiyat Inquiries Act, since the statement of objects of the said Act provides for settlement of claim of succession to the service inam lands.

3. The learned counsel appearing for the petitioners submits that, the Divisional Commissioner committed error in dismissing the appeal on the point of limitation. It is submitted that appellate court has not touched issues related to determination of the nature of land and applicability of Hyderabad Abolition of Inams and Cash Grants Act, 1954. Thus, there is failure to exercise jurisdiction under the impugned judgment. It is further submitted that the Hon''ble Apex Court in the case of Puran Singh and others Vs. State of Punjab and others, held that when lis is continued the point of limitation requires liberal construction. Assuming that there was point of limitation having regard to the chequered history of litigation of running from office of Divisional Commissioner to State Govt. and back to Divisional Commissioner, point of limitation should not have been decided against the petitioner. It is further submitted that the letter and spirit of the judgment in Writ Petition No. 3565/1998 dated 15.09.2003 is not followed by the appellate authority. Hon''ble High Court in the said judgment has considered point to adjudicate the core issue and in this perspective has directed

to present appeal memo before State afresh as a technical issue.

4. The learned counsel further invited my attention to the pleadings in the petition, annexures thereto, grounds taken therein and thereafter the averments in rejoinder affidavit filed by the petitioners. It is submitted that the High Court remanded the matter to the State Government by judgment in Writ Petition No. 3565 of 1998. The fact remains that the appeal got reviewed. So much so, during pendency of appeal before the State Government and remittance of said appeal back to Divisional Commissioner for re-adjudication and the office of Divisional Commissioner reopened old case by putting Appeal No. 2/1997 in judgment dated 10.08.2012. It is submitted that certificates of Dr. D.L. Borde are bogus is denied. It is submitted that Dr. D.L. Borde was not Medical Officer at Dhanora do not substantiate the fact that alleged certificates are incorrect. It is submitted that the petitioner has taken treatment of Dr. Borde practicing at Ambajogai. As late as on 28.02.2013, the deponent has taken medical aid from Dr. Borde. The learned counsel invited my attention to the prescription of Dr. Borde which is placed on record at Exh. R-2 alongwith rejoinder of affidavit. The learned counsel further submits that the entire exercise initiated by respondent nos. 2 to 9 in the year 1988 is futile. The respondents had no locus to file application before the Deputy Collector, Ambajogai. It is submitted that since the succession certificate was granted in favour of the petitioner in the year 1972, application filed by respondent nos. 2 to 9 is hit by res-judicata. It is submitted that the respondents never challenged the succession granted in favour of the petitioner way back in the year 1972. The learned counsel invited my attention to dictionary meaning of word "Mufti". He also invited my attention to the provisions of Hyderabad Atiyat Inquiries Act, 1952. It is submitted that the appellate authority ought to have heard the appeal on merits. The learned counsel invited my attention to the reported judgment of the Supreme Court in a case of Sikander Jehan Begum and Another Vs. Andhra Pradesh State Government, and in particular para no. 11 thereof. The learned counsel further submits that the Deputy Collector, Ambajogai has not considered the scheme of the statute and the judgment in the case of Sikandar Jehan Begum and another supra. The learned counsel for the petitioner further invited my attention to the judgment of the Supreme Court in a case of Puran Singh and others Vs. State of Punjab and others, and submits that as long as lis is alive, the appeal cannot be dismissed on the technical ground of delay in filing the same. The learned counsel further invited my attention to the judgment of the Supreme Court in the case of Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs. and Others, and in particular Head Note B thereof. It is submitted that the words "sufficient cause" in section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice. The learned counsel further invited my attention to the judgment of the Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, . He submits that when the decree passed is without jurisdiction is nullity. He submits that the judgment and order passed by the Deputy Collector (Land Reforms) Ambajogai is without

jurisdiction as much as succession certificate is granted to the petitioner in the year 1972. At the cost of repetition, he submits that respondents have never challenged the succession certificate issued in favour of the petitioner in the year 1972. Therefore, relying upon the pleadings in the petition, grounds taken therein, rejoinder affidavit, relevant provisions of Hyderabad Atiyat Inquiries Act, provisions of Limitation Act and also the judgments of Supreme Court cited supra, the learned counsel for the petitioner submits that the petition deserves to be allowed.

5. On the other hand, the learned A.G.P. for respondent State submitted that the order passed by the Divisional Commissioner, Aurangabad, needs no interference.

6. The learned counsel for respondent nos. 4 and 6 submits that though affidavit in reply is filed on record supporting the case of the petitioner, he has received instructions from the said respondents not to support the petitioners.

7. The learned counsel appearing for respondent no. 9 invited my attention to the affidavit in reply filed on behalf of respondent no. 9. It is submitted that the petition is misconceived and deserves to be rejected as there is no merit in the petition.

8. It is submitted that the petitioners have not availed the liberty granted by the High Court by order dated 15.09.2003 passed in Writ Petition No. 3565 of 1998. The High Court was pleased to grant liberty to the petitioners to approach the appellate authority in given time and presented the appeal after one year and eight months. It is submitted that there is no illegality or perversity in the order impugned in this petition. It is submitted that the delay was beyond condonation as it was beyond the period granted by the High Court for presentation of the appeal, the Divisional Commissioner has rightly rejected the prayer for condonation of delay. It is submitted that the petitioners, in earlier point of time, did approach to the Divisional Commissioner in appeal and wherein remand order dated 30.04.1998 was passed. The said order was challenged by the respondents herein before the High Court in Writ Petition No. 3565 of 1998 as the Divisional Commissioner, at the relevant time, had no jurisdiction to entertain the appeal filed by the petitioners herein. The High Court, by order dated 15.09.2003 in Writ Petition No. 3565 of 1998, allowed the petition filed by the respondents and held that the Divisional Commissioner had no jurisdiction to entertain the appeal filed by the petitioners. It is submitted that though the High Court, by order dated 27.10.2003 granted six weeks time to file the appeal before the State Government, the petitioners herein filed the appeal on 21.06.2005 i.e. after one year and 8 months. It is submitted that the ground which is stated in the application for condonation of delay alongwith appeal is that filing of the appeal delayed because of the ailment of the petitioner. It is submitted that the petitioners placed reliance on six medical certificates issued by Dr. D.L. Borde, Medical Superintendent, Rural Hospital for Rhumatod Arthritis for the period from 10.09.2003 to 01.01.2004, 02.01.2004 to 04.03.2004, 05.03.2004 to 06.06.2004, 07.06.2004 to 08.09.2004, 09.09.2004 to 10.12.2004 and

11.12.2004 to 15.04.2005. However, the petitioner has not placed on record those certificates which, according to the learned counsel for respondent no. 9, are appears to be bogus. The learned counsel for respondent no. 9 invited my attention to afore referred medical certificates which are placed on record at exh. R-2 collectively with the affidavit in reply. It is submitted that upon reading of those certificates, it appears that those are issued by the Medical Superintendent, Rural Hospital. However, on enquiry with the superior officers, it was found that for the relevant period, Dr. D.L. Borde was not working as Medical Superintendent at Rural Hospital. The learned counsel invited my attention to the findings recorded by the Divisional Commissioner, Aurangabad upon appreciation of the medical fitness certificate issued by Dr. Borde and submits that the Divisional Commissioner has clearly observed that the said certificate appears to be doubtful and not believable. It is submitted that the Divisional Commissioner, upon appreciation of the medical certificates, has recorded his finding and as long as those findings are not perverse, this Court, under extra ordinary writ jurisdiction, cannot interfere in said findings/opinion expressed by the appellate authority while rejecting the application for condonation of delay. The learned counsel further submits that, the deponent has raised objection to the medical certificates as well as to its authenticity. After passing of the order by the Divisional Commissioner, the answering respondent has obtained information about certificates and Medical Officers. The competent authority has issued information that there was no such Medical Officer working under their establishment or even within the entire Beed district and therefore, it is quite clear that certificates are fake and bogus. The learned counsel appearing for respondent no. 3 invited my attention to the information received from the competent authority which is placed on record alongwith affidavit in reply at exh. R-4 collectively. It is submitted that the petitioners have not approached the court with clean hands as much as the fake and bogus medical certificates have been produced on record. It is further submitted that the High Court, in Writ Petition No. 3565 of 1998, by entertaining the prayer of the petitioners i.e. original respondents in said writ petition, granted six weeks time to file the appeal before the State Government. The learned counsel submits that since the appeal filed by the petitioners has not been entertained on merits and the prayer for condonation of delay in filing the appeal is rejected by the Divisional Commissioner, Aurangabad, the question of adjudicating the contentions on merits of the matter in extra ordinary writ jurisdiction cannot arise. He submits that, this Court may not travel beyond the scope of writ petition as much as the adjudication in writ petition should be confined only in respect of rejection of the prayer for condonation of delay by the Divisional Commissioner. The learned counsel for respondent no. 9 pressed into service exposition of this Court in case of Vithhal Dhondiba Chawan (Died) (through LRs. Rajaba Chawan, Anil Vitthalrao Chawan and Santosh Chawan Vs. Madhavrao alias Mahadev Tukaram Chavan, Rama Tukaram Chawan, Sadashiv Tukaram Chawan and Parasram Sitaram Chawan, and submits that, in the first place, sufficient cause has not been disclosed, and secondly, cause which was disclosed in the application for

condonation of delay by the petitioners before the Divisional Commissioner, has not been accepted and therefore, this Court may not interfere in the impugned judgment and order. He further pressed into service exposition of the Hon'ble Supreme Court in case of Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another, and in particular para nos. 11 to 14, 17,19 and 26 and also Head Note B thereof. He submits that incorrect statement for condonation of delay itself is sufficient to reject the application, even without going into the merits of explanation for delay furnished therein. The learned counsel also invited my attention to the judgment of Hon'ble Supreme Court in case of Balwant Singh (Dead) Vs. Jagdish Singh and Others, and in particular para nos. 7, 8 and 13 to 16 thereof. He submits that the exercise of discretion while considering the prayer for condonation of delay has to be vis-a-vis sufficiency of cause. Therefore, relying upon the averments in the affidavit in reply, annexures thereto, section 5 of the Limitation Act, judgments in cases of Vitthal Chavan, Pundlik Patil and Balwantsingh (supra), the learned counsel for respondent no. 9 submits that the writ petition is devoid of any merit and same may be dismissed.

9. The learned counsel for respondent no. 10 invited my attention to the affidavit in reply filed on behalf of respondent no. 10 and submits that respondent no. 10 is cultivating the lands since before 1975. Survey No. 180 and other adjacent lands have been distributed amongst its cultivators under the provisions of Maharashtra Ceiling and Holdings Act, 1975. The respondent no. 10 has received 2 A. land in said distribution. Therefore, he submits that since the respondent no. 10 is cultivating the land to the extent of 2 A. personally and it is the only source of income for his livelihood, writ petition may be dismissed.

10. As observed earlier, though the respondent nos. 4 and 6 filed affidavit, stating therein that the appeal filed by the petitioner should not have been rejected by the Divisional Commissioner, Aurangabad, on the ground of delay, the learned counsel for respondent nos. 4 and 6 submits that he has instructions from respondent nos. 4 & 6 not to press averments in their affidavit in reply.

11. The affidavit in reply is also filed by respondent nos. 2(I)(II)(III), 2(ii) (iii), 3, 5 and 8. By way of filing said reply, the said respondents have opposed the admission of the petition with liberty to file further affidavit in case the writ petition is entertained on merits.

12. I have given careful consideration to the submissions of the learned counsel appearing for respective parties and with their able assistance, perused pleadings in the petition, entire documents placed on record, provisions of Limitation Act, all other relevant provisions and the judgments cited across the bar by the respective counsel for the parties.

Since the Divisional Commissioner, Aurangabad has passed order only on the application of condonation of delay filed by the petitioner and same application has been rejected, there is no adjudication of the appeal filed by the petitioner

on merits by the Divisional Commissioner i.e. the appellate authority. Therefore, though the counsel for the petitioners argued on merits of the matter, this court is confined itself to entertain the writ petition only in respect of, whether the prayer of the petitioner for condonation of delay has been properly considered by the appellate authority in the light of cause disclosed in the application for condonation of delay. Upon careful persual of the impugned order passed by the appellate authority, it is abundantly clear that appellate authority has considered the prayer of the petitioner i.e. appellant for condonation of delay and by the impugned judgment and order held that the appeal is not filed within limitation and no sufficient cause has been disclosed so as to condone the delay. The appellate authority has not considered the appeal on merits. Therefore, this court deem it proper to confine itself of hearing the present petition to find out whether the appellate authority has recorded correct reasons/findings while rejecting prayer for condonation of delay in filing appeal.

13. So far delay in filing the appeal is concerned, the petitioners, in para no. 9 has stated that the appeal was filed before the State Government on 05.05.2005. It was belated and filed after a period of six weeks prescribed by the High Court. The delay was explained supported by medical certificates of doctors about illness of the power of attorney and other difficulties on the part of the appellants in presenting the appeal. So far as question of limitation is concerned, in ground "C" of the petition, it is stated that, question of limitation is in consequential in view of the fact that the appeal itself refers to the registered no. of 1997 appeal which was filed within limitation. The date of filing and date of starting proceedings of appeal refers to the earlier appeal reopening and as such there was no point of limitation involved therein. The petitioners, in ground no. "D" of the petition admits that appellate court has not touched the merits of the matter. According to the petitioners, lis is continued and therefore, the point of limitation requires liberal construction. Except the afore stated averments in the petition and the judgment cited by the learned counsel for the petitioners in respect of prayer for condonation of delay, there are no other pleadings/grounds taken in the writ petition.

14. It appears that the application was filed before the Deputy Collector (Land Reforms), Beed. The same was allowed. In the said appeal, the determination of nature of lands u/s 2(A) and the occupancy u/s 6 of Hyderabad Abolition of Inams and Cash Grants Act, 1954 was claimed. The Deputy Collector (Land Reforms), Beed, by judgment and order dated 28.10.1996 held that the suit lands i.e. survey nos. 181, 182 and 183 are community inam lands and granted occupancy to respondent nos. 2 to 9 herein. Being aggrieved by the said judgment and order, the petitioners herein filed appeal before the Divisional Commissioner, which was registered as Inam Appeal No. 2/1997. In the said appeal, Marathwada Wakf Board filed application to implead the said Board as party to the proceedings since, according to Marathwada Wakf Board the lands are wakf and granted for service to institution. The Divisional Commissioner, by judgment and order dated 30.04.1998 partly allowed Inam Appeal No. 2/1997

and quashed judgment of the District Collector (Land Reforms), Beed and directed the Deputy Collector (Land Reforms) to decide the appeal afresh after hearing the parties including Marathwada Wakf Board.

15. Being aggrieved by the judgment and order passed by the Divisional Commissioner, Aurangabad on 30.04.1998, the respondent nos. 2 to 9 filed Writ Petition No. 3565 of 1998 in the High Court. The High Court held that the Divisional Commissioner, Aurangabad, has no jurisdiction to entertain Appeal NO. 2/1997 filed by the petitioners. It is further held that the appeal is maintainable before the State Government. It appears that the Advocate appearing for the petitioners in the said writ petition expressed apprehension that due to quashment of the decision of the Divisional Commissioner, right of respondents in petition i.e. the petitioners herein, to prefer appeal may not be taken away and therefore, he prayed for clarification from the High Court that in case the appeal is presented to the State Government, same may be considered and time spent in prosecuting the writ petition and appeal before the Divisional Commissioner, Aurangabad may be excluded from the computation of the period of limitation in filing the appeal before the State Government challenging the judgment and order passed by the Deputy Collector (Land Reforms), Beed on 28.10.1996. The High Court, in order dated 15.09.2003 in Writ Petition No. 3565 of 1998 observed that if the fresh appeal is presented by the respondents i.e. petitioners herein before the State Government within six weeks from 15.09.2003, it shall treat as if an appeal presented on the day on which earlier appeal was presented and dispose it of in accordance with law after hearing all the parties concerned. The High Court continued the status-quo order for a period of six weeks from disposal of the writ petition. However, it appears that the High Court granted six weeks time and protected the petitioners to file appeal before the State Government, the appeal was not filed within six weeks from 15.09.2003. It is admitted position that appeal was filed before the State Government on 05.05.2005. Therefore, it appears that the High Court considered the prayer of the petitioners and shown indulgence by observing that the time spent by the petitioners in prosecuting the appeal before the Divisional Commissioner, Aurangabad and in prosecuting the writ petition, be excluded from the computation of the period of limitation and further to enable the petitioners to file fresh appeal six weeks time was granted by extending the interim order of status-quo for said period.

16. The provisions of Sub section 2 of Section 2(A) of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 reads thus:-

2 A.(2) Whether any question is decided by an officer so authorised by the State Government, any person aggrieved by such decision may file an appeal to the State Government within ninety days from the date of such decision.

Therefore, in view of aforesaid provisions, limitation for filing the appeal is 90 days from the decision of the officer of the State Government.

17. The Divisional Commissioner, Aurangabad, while passing the impugned judgment and order has recorded reasons in not condoning the delay in filing the appeal. In para no. 9 of the impugned judgment, the appellate authority observed that though the High Court granted time of six weeks to the petitioners from 15.09.2003 for filing the appeal with the State Government, no appeal was filed within six weeks and same was filed before the State Government after elapse of 1 year 7 months. It appears that the Divisional Commissioner, Aurangabad, has perused reasons stated in the application for condonation of delay and also the certificates issued by the Medical Officer, Ambajogai and observed that the Medical Officer, Ambajogai has issued 5 medical certificates for different period in the name of appellant Sajed Naziruddin s/o Zaheeruddin. It is specifically observed by the appellate authority that upon perusal of said certificates which are in prescribed format, it appears that though one fitness certificate is issued, another fitness certificate is issued immediately from the next date and therefore, upon perusal of said certificates issued by the Medical Officer, Ambajogai, it creates doubt in respect of the medical certificates and therefore, said certificates cannot be admissible/acceptable so as to condone the delay. The findings recorded by the appellate authority in para no. 9 in vernacular reads as under.:

18. In order to ascertain whether the reasons/findings recorded by the appellate authority in para no. 9 are correct or perverse, the copies of said certificates which are placed on record at Exh. R-2 alongwith affidavit in reply of respondent no. 9, are perused by this Court. Upon careful perusal of said certificates, there is no doubt that said certificates are in same format and only different dates of treatment have been mentioned in 5 certificates. It appears that there is stamp of Medical Officer, Rural Hospital and said certificates are signed by the Doctor. Upon conjoint reading of medical fitness certificates, it clearly appears that said certificates are issued one after another mentioning therein different dates. As soon as period stated in the first certificate comes to an end from very next date, second certificate is issued thereby showing further period under treatment. Same practice has been followed in remaining certificates. As rightly observed by the appellate authority, the said certificates create doubt about its authenticity. The learned counsel appearing for respondent no. 9 is right in contending that the petitioner has conveniently avoided to place on record alongwith writ petition, copy of the application which was filed for condonation of delay before the appellate authority and also copies of medical fitness certificates issued by Dr. D.L. Borde. However, said copies of medical certificates have been placed on record by respondent no. 9 alongwith affidavit in reply. There is no denial by the petitioners that Exh. R-2 i.e. copies of medical fitness certificates are not the same certificates on which the petitioner has placed reliance before the appellate authority.

19. The provisions of section 5 of Limitation Act, 1963 reads thus:-

Extension of prescribed period in certain cases - Any appeal or any application,

other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, 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.

20. The Hon"ble Supreme Court in a case of R.B. Ramlingam Vs. R.B. Bhvaneswari, held that, the test of "sufficient cause" is purely an individualistic test. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Therefore, the legislature has left upon a well intentioned discretion to decide individual cases. Therefore, when the courts are called upon to exercise the discretion, the court has to exercise discretion in a judicious manner and taking into consideration the "sufficient cause" disclosed in the application for condonation of delay. At the cost of repetition, it has to be observed that when court refers to the term "in the interest of justice", it means justice to both the sides and not only to one side.

21. The constitutional bench of the Hon"ble Supreme Court in a case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, , while considering the delay in filing writ petition under Article 226 of the Constitution, wherein there is no any limitation prescribed for filing writ petition under Article 226 of the Constitution, held thus:

The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

22. In another authoritative pronouncement of the Hon"ble Supreme Court in a case of P.K. Ramachandran Vs. State of Kerala and Another, , held thus:

Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

23. This court, in the case of Vitthal Dhondiba Chawan (died) through L.Rs. (supra) while interpreting the provisions of Section 5 vis-a-vis Articles 120 & 121 held that what is required to be seen is the cause disclosed in the application and not the length of delay.

24. The Supreme Court in case of Pundlik Patil (supra) held that if the averments in the application for condonation of delay are incorrect or incorrect statements are made in the application, itself is sufficient to reject the application, even without going in the merit of explanation for delay furnished therein. It is further held in para nos. 22 & 23 that:

22. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4th Ed., Vol. 28, p. 266, para 605, the policy of the Limitation Acts is laid down as follows:

The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence.

23. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in Rajender Singh and Others Vs. Santa Singh and Others, has observed: "the object of law of Limitation is to prevent disturbance and 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." In Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , this court observed that this principle is based on the maxim "interest reipublicae ut sit finis litum, that is, the interest of the State requires that there should be end to litigation but at the same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

25. In another authoritative pronouncement in the case of Balwant Singh (dead) (supra), the Supreme Court held that "sufficient cause" must be weighed in the scale of reasonableness and conduct of the party concerned. The basic principle is that justice must be done to both the parties. The discretion must be exercised judiciously in terms of Order XXII Rule 9(3), provisions of section 5 of the Limitation Act. It is further held that Court may take the liberal view while considering the prayer for condonation of delay, but not by ignoring the interest of justice.

26. In another authoritative pronouncement in a case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, , the Hon''ble Supreme Court held that, court do not enjoy unlimited and unbridled discretionary powers and discretion has to be exercised in a systematic manner informed by reason. The Hon''ble

Supreme Court in para no. 26 of the said judgment held that :

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay u/s 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

27. In the light of provisions of section 5 of the Limitation Act and various authoritative pronouncement of the Supreme Court and this Court cited supra, in the facts of the present case, the appellate authority has rightly held that medical certificates produced on record by the appellant in support of his prayer for condonation of delay, upon perusal of said certificates it creates doubt about authenticity of such certificates and therefore, the delay cannot be condoned. As already observed, upon careful perusal of the copies of said certificates produced on record alongwith affidavit in reply of respondent no. 9, there is no slightest doubt in the mind that the observations/findings of the appellate authority are in consonance with material placed on record. Therefore, it follows from the discussion hereinabove that, the petitioner did not disclose correct and true facts before the appellate authority in support of his prayer for condonation of delay. The cause disclosed in the application for condonation of delay was not sufficient. The foremost principle which deserves to be followed by the party is that, while approaching the court, the party should approach the court with clean hands disclosing all true, relevant and correct facts. The party who does not approach the court with clean hands, is not entitled for discretionary reliefs.

28. Therefore, in the light of discussion hereinabove, this court is of the considered opinion that, the appellate authority has recorded reasons/findings in consonance with the material/documents placed on record. The view taken by the appellate authority is reasonable and possible and there is no perversity as such. Even though other view may be possible, is not ground to interfere with the reasonable and possible view taken by the appellate authority upon correct appreciation of the documents placed on record. Therefore, the writ petition sans

merits hence rejected.