

(2003) 04 DEL CK 0098

In the Delhi High Court

Case No : CM 87 and 88 of 2003 and Regular First Appeal 36 and 37 of 2003

K.M. Sharma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 300A
Land Acquisition Act, 1894 — Section 18, 28A, 54
Limitation Act, 1963 — Section 5

Citation : (2003) 04 DEL CK 0098

Hon'ble Judges : B.C. Patel, C.J.; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : V.P. Singh and Arjun Bhandari, for the Appellant; Sanjay Poddar, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—These two applications are identical in nature. Both are applications u/s 5 of the Limitation Act, 1963 read with section 151 of the code of civil procedure, 1908 for condensation of delay in filing the respective appeals u/s 54 of the Land Acquisition Act, 1894. The appeals are directed against the common judgment and decree dated 31.7.1991 passed by the learned Additional District Judge, Delhi in LAC No. 445/69 and LAC No. 604/69. The delay in filing these appeals, for which condensation is being sought, is of 11 years and 123 days.

2. The Explanation put forward for the delay is that after the passing of the impugned judgment and decree, the appellant obtained a certified copy thereof and handed over the same to Shri G.V. Dass Advocate for the purpose of filing the appeals before this court. It is further alleged that the appellant handed over a sum of Rs. 26,000/- (in each appeal) towards court fees and professional fee for filing of the appeals. It is further alleged that the said Advocate drafted the appeals and got the memoranda of appeals signed by the appellant and told him

that the appeals would be filed in the High Court and after admission would come up for hearing in due course of time. It is then alleged that intermittently the appellant enquired about the outcome of the appeals and on each such occasion the said advocate informed him that the appeals would be heard Along with RFA No. 83/1987 (Union of India v. Rajiv Gupta and Ors.) and other connected appeals relating to the same village. It is further stated in the applications that the appellant came to learn that the said RFA No. 83/1987 had been listed for hearing and had been decided by this court. Upon gaining this knowledge, it is alleged, the appellant visited the office of the said advocate (Shri G.V. Dass) and was shocked to learn that Shri Dass had passed away on 7.3.2002. The appellant alleges that upon making enquiries at the office of the deceased advocate he was told that the appeal files were untraceable. After inspection of the institution register in the RFA branch of this court, the appellant alleges, he was unable to trace any information about the filing and/or pendency of the appeals. Then he inspected the file of RFA No. 83/1987 on 17.12.2002 and came to know that the compensation for land in question had been enhanced in those appeals¹. It is then that he contacted the present advocate who advised him to apply for fresh certified copy of the impugned judgment, which he did on 19.12.2002 and thereafter delivered the same to the present advocate's clerk on 4.1.2003. The present applications and appeals were drafted and filed after a delay of 11 years 123 days.

3. It is this story, albeit well laced, which we are urged to believe and thereupon to condone the delay! There are too many holes which remain unplugged. No dates, not even months, or even years are mentioned as regards the various events. When was the certified copy obtained in the first instance? When did he hand them over to the said late Shri Dass? When did he sign the memoranda of appeals? When did he hand over the money? When did he enquire, albeit intermittently? When did he learn that RFA No. 83/1987 had been listed for hearing and decided? When did he visit the office of late Shri Dass only to learn that he was no more? Are we, then, so credulous to accept this Explanation?

4. The truth, more likely, is this. After the impugned judgment the appellant felt satisfied with the enhancement granted there under. He never handed over the fees or memoranda of appeal to the departed advocate. He rested, content with what he had got and willfully gave up further pursuit in the matter. He took no further steps. Only when he came to learn of the decision of this court in Rajiv Gupta's case (supra), he felt as if he had missed out on a bonanza. He realised that the provisions of Section 28-A of the Land Acquisition Act, 1894 were not available to him and the only way was to now have the appeals filed and heard. It is then that he applied for a fresh certified copy and approached the present advocate to file these appeals with applications for condensation of delay of 11 years and 123 days!

5. We find it difficult to hold that there "sufficient cause" which prevented the appellant from filing the appeals in time. We find it even more difficult when we

note, as we were told at the bar by the learned senior counsel appearing on behalf of the appellant, that the appellant is himself an advocate. On such facts, we cannot condone the delay.

6. Mr V.P. Singh the learned senior counsel appearing on behalf of the appellant, on the strength of an order dated 9.5.2002 passed by a division bench of this court in C.M. No. 756/2002 (in RFA No. 279/2002), submitted that on similar facts and in fact involving the same advocate (late Shri Dass) delay was condoned subject to the condition that the appellant would not be entitled to any interest on enhanced amount, solarium or additional amount (if, ultimately, the appeal is allowed) for the period of the delay. Without going into the merits of that case, we may state that even if the delay in that case was on account of the negligence of the same advocate, it does not at all follow that in every case the same advocate would act negligently. On the facts of that case the Division Bench hearing the matter was of the view that delay ought to be condoned and Therefore it passed the conditional order. Here, we are of the view that the delay has not been sufficiently explained. Reference to the said order dated 9.5.2002 by the learned senior counsel is, Therefore, misplaced.

7. Next, Mr V.P. Singh referred to the decision of the Supreme Court in Jalandhar Improvement Trust v. State of Punjab and Ors. In particular he referred to the following portion in paragraph 5 thereof:-

"So far as the fact that in this case the 4th respondent's application for reference u/s 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent for differential treatment."

On the strength of this, Mr Singh contends that the belated appeals in the present case should also not make any difference and the appellant should not be treated differently from those who got the benefit in Rajiv Gupta's case (supra). This analogy, we are afraid, cannot be made. The facts situation in the two cases, the one before the Supreme Court and the one before us, are entirely different. Firstly, the Supreme Court had before it a case where co-owners were being given differential treatment in respect of the same land which belonged to all of them jointly. Secondly, in that case the 4th respondent on the one hand and the petitioners 2 to 5 on the other were intimately related. In fact, the 4th respondent was the mother of the petitioners 2 to 5. In the case before us, the appellant is not a co-owner of the lands in question in Rajiv Gupta's case (supra). Nor is he so intimately related. The special circumstances that prevailed in the case before the Supreme Court are non-existent in the case before us.

8. The learned senior advocate changed tack and placed before us a decision of a Division Bench of this court in the case of Shiv Dhan Singh v. Union of India to support his plea that there must be parity in the amount of compensation on the

basis of the liability of the state. Which principle, according to him, stands incorporated in Article 300-A of the Constitution. In particular, he placed reliance upon paragraph 12 of the judgment in that case. According to him, the decision in Shiv Dhan Singh's case (supra) is an authority for the proposition being advanced by him that on the ground of parity the appellant herein must also be accorded the benefit of the enhanced compensation in Rajiv Gupta's case (supra) despite the fact of delay. We are unable to subscribe to this point of view.

9. As indicated in the judgment in Shiv Dhan Singh's case (supra) itself⁴, the claimants had sought a reference u/s 18 of the Land Acquisition Act, 1894. The reference was decided by the reference court. The claimants therein, being dissatisfied with the determination of compensation by the reference court, filed statutory appeals u/s 54 of the said Act before this court, which were dismissed in limine without any determination on merits. Further appeals to the Supreme Court were also dismissed on the ground of delay as being barred by limitation. On the other hand other appeals arising out of the same award had not been dismissed in limine and had been admitted for hearing on merits. In respect of some other appeals which had also been dismissed in limine by this court, further appeals were preferred before the Supreme Court. When the matter of pendency of appeals (i.e., those which had not been dismissed in limine) in this court was brought to the notice of the Supreme Court, the appeals before it were remitted to this court for fresh disposal. Along with the pending appeals in accordance with law. A Division Bench of this court heard and decided all the appeals (those which were pending post admission and those that were remanded by the Supreme Court) and disposed of the same by a common judgment delivered in *Jas Rath v. Union of India*. After this judgment was delivered, the claimants in Shiv Dhan Singh's case moved applications u/s 151 of the Code of Civil Procedure, 1908 in their disposed of appeals (which had earlier been dismissed in limine) seeking parity with the others and prayed that they be given the benefit of the judgment in *Jas Rath*'s case (supra). This court, in these peculiar circumstances and purely on equitable considerations, allowed the applications and gave the claimants therein the benefit of the judgment in *Jas Rath*'s case (supra). The questions before the court in that case were entirely different from the question of condensation of delay in the present case. In fact, section 5 of the Limitation Act, 1963 was not even referred to in the judgment in Shiv Dhan Singh's case (supra).

10. There is another aspect of the matter. In Shiv Dhan Singh's case (supra) the approach of the Division Bench of this court was thus:

"Therefore, the approach, which in such like cases has to be adopted is the one of equity to ensure that all persons who have been deprived of their land, since they can only be deprived in accordance with law, as envisaged under Article 300-A of the Constitution, the constitutional mandate is to tender such compensation, which is the true market value, as determined in accordance with law."

Article 300-A provides that "no person shall be deprived of his property save by

authority of law". Surely, this implies that a person can be deprived of his property by authority of law. And, this authority of law definitely means a law made by a competent legislature. The Land Acquisition Act, 1894 read with the Code of Civil Procedure, 1908 and the Limitation Act, 1963 which prescribes a period of limitation for appeals is clearly such "law". So, if an appeal presented u/s 54 of the Land Acquisition Act, 1894 is dismissed on the ground of limitation, it does not mean that the provisions of Article 300-A of the Constitution would be violated. This is also not the ratio of the decision in Shiv Dhan Singh's case (supra).

11. The case of Shiv Dhan Singh (supra) was one decided purely on grounds of equity applicable to the peculiar facts of that case. But it is equally well settled that delay defeats equity. In this connection it would be appropriate to note the following observation of the Supreme Court in the case of Hameed Joharan v. Abdul Salam

"It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favored rather than claiming disfavor. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent)."

So, the decision in Shiv Dhan Singh's case (supra) is of no assistance to the applicants herein on several counts.

12. Mr V.P. Singh, learned senior counsel for the appellant/ applicant lastly contended that in dealing with condensation of delay applications u/s 5 of the Limitation Act, 1963 the court should not adopt a hyper-technical or technical approach and the court ought to exercise its discretion, which it undoubtedly has, to advance substantive justice. And, accordingly in this case too the delay be condoned. He also submitted that a litigant must not suffer on account of inaction/ mistake of his advocate whom he is justified in trusting. In support of these arguments he cited three decisions of the Supreme Court :- *Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Ors.*; *Collector, Land Acquisition v. Katiji*; *G. Ramegowda v. Special Land Acquisition Officer, Bangalore*. It would instructive to set out first, the provisions of section 5 of the Limitation Act, 1963 and, then, the relevant portions of the aforesaid judgments and then see as to what extent they govern the case at hand.

"5. 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.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining of computing the prescribed period may be sufficient cause within the meaning of this section." (underlining added)

In the Concord of India case (supra) the Supreme Court held:

"There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for laymen or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgment of one of us in State of Kerala Vs. Krishna Kurup Madhava Kurup,

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have been quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation." Mata Din Vs. A. Narayanan,

In Ramegowda's case (supra)(which also refers to the third case - the Katiji case (supra)), the Supreme Court observed as under:

"The contours of the area of discretion of the courts in the matter of condensation of delays in filing appeals are set out in a number of pronouncements of this Court. See Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., Shakuntala Devi Jain Vs. Kuntal Kumari and Others, ; Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, ; Mata Din Vs. A. Narayanan, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condensation of the delay. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , this Court said : (SCC p. 108, para 3)

When substantial justice and technical consideration 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....

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.

13. These decisions while clearly stating the law, in no way advance the case of the applicant/ appellant. For, while, in construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice, it is also true that the court still has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. And, each case has to be considered on the particularities of its own special facts. The Supreme Court has also consistently held that delays in preferring appeals are not to be condoned where there is gross negligence or deliberate inaction or lack of bona fides imputable to the party seeking condensation of the delay. The question of liberal interpretation and substantial justice would only arise when there is no gross negligence or deliberate inaction or lack of bona fides imputable to the party seeking condensation of the delay. In the present case, as indicated above, the Explanation of the applicant/appellant lacks credence. The allegation of negligence is sought to be foisted on an Advocate who is no more. The averments are bereft of material particulars and are sufficiently vague for us to conclude that, in the least, there was deliberate inaction and/or gross negligence on the part of the applicant/appellant himself. It is more so, because the applicant/ appellant is also an advocate. He cannot be imputed with ignorance of legal procedures and the level of innocence or naivete of a rustic villager.

14. In these circumstances, the delay of 11 years and 123 days cannot be condoned. Both the applications and consequently the relative appeals are dismissed. There shall be no order as to costs.

While dealing with the scope of Section 5 of the Limitation Act, this Court in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, held :

In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favor of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that 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. As

has been observed by the Madras High Court in Krishna v. Chathappan (1890) 13 Mad 269 :

"Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

Again in The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, and G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, this Court observed that the expression "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delays be condoned in the interest of justice where gross negligence or deliberate inaction or lack of bona fides is not imputable to the party seeking condensation of delay. Law of limitation has been enacted to serve the interests of justice and not to defeat it.

Again in N. Balakrishnan Vs. M. Krishnamurthy, this Court held that acceptability of Explanation for the delay is the sole criterion and length of delay is not relevant. In the absence of anything showing mala fide or deliberate delay as a dilatory tactic, the court should normally condone the delay. However, in such a case the court should also keep in mind the constant litigation expenses incurred or to be incurred by the opposite party and should compensate him accordingly. In that context the Court observed :

"9. It is axiomatic that condensation 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. Once the court accepts the Explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

M.K. Prasad Vs. P. Arumogam,

It is undoubtedly true that in dealing with the question of condoning the delay u/s 5 of the Limitation Act the party seeking relief has to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application

within the prescribed time and this has always been understood to mean that the Explanation has to cover the whole period of delay, vide Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others, . However, it is not possible to lay down precisely as to what facts of matters would constitute "sufficient cause" u/s 5 of the Limitation Act. But those words should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party, i.e., the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he would have or should have taken. What would be such necessary steps will again depend upon the circumstances of a particular case (vide The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, .

Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others,

C.M. No. 87/2003 in RFA No. 36/2003

C.M. No. 88/2003 in RFA No. 37/2003

1. These two applications are identical in nature. Both are applications u/s 5 of the Limitation Act, 1963 read with section 151 of the code of civil procedure, 1908 for condensation of delay in filing the respective appeals u/s 54 of the Land Acquisition Act, 1894. The appeals are directed against the common judgment and decree dated 31.7.1991 passed by the learned Additional District Judge, Delhi in LAC No. 445/69 and LAC No. 604/69. The delay in filing these appeals, for which condensation is being sought, is of 11years and 123 days.

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trace any information about the filing and/or pendency of the appeals. Then he inspected the file of RFA No. 83/1987 on 17.12.2002 and came to know that the compensation for land in question had been enhanced in those appeals¹¹. It is then that he contacted the present advocate who advised him to apply for fresh certified copy of the impugned judgment, which he did on 19.12.2002 and thereafter delivered the same to the present advocate's clerk on 4.1.2003. The present applications and appeals were drafted and filed after a delay of 11 years 123 days.

3. It is this story, albeit well laced, which we are urged to believe and thereupon to condone the delay! There are too many holes which remain unplugged. No dates, not even months, or even years are mentioned as regards the various events. When was the certified copy obtained in the first instance? When did he hand them over to the said late Shri Dass? When did he sign the memoranda of appeals? When did he hand over the money? When did he enquire, albeit intermittently? When did he learn that RFA No. 83/1987 had been listed for hearing and decided? When did he visit the office of late Shri Dass only to learn that he was no more? Are we, then, so credulous to accept this Explanation?

4. The truth, more likely, is this. After the impugned judgment the appellant felt satisfied with the enhancement granted there under. He never handed over the fees or memoranda of appeal to the departed advocate. He rested, content with what he had got and willfully gave up further pursuit in the matter. He took no further steps. Only when he came to learn of the decision of this court in Rajiv Gupta's case (supra), he felt as if he had missed out on a bonanza. He realised that the provisions of Section 28-A of the Land Acquisition Act, 1894 were not available to him and the only way was to now have the appeals filed and heard. It is then that he applied for a fresh certified copy and approached the present advocate to file these appeals with applications for condensation of delay of 11 years and 123 days!

5. We find it difficult to hold that there "sufficient cause" which prevented the appellant from filing the appeals in time. We find it even more difficult when we note, as we were told at the bar by the learned senior counsel appearing on behalf of the appellant, that the appellant is himself an advocate. On such facts, we cannot condone the delay.

6. Mr V.P. Singh the learned senior counsel appearing on behalf of the appellant, on the strength of an order dated 9.5.2002 passed by a division bench of this court in C.M. No. 756/2002 (in RFA No. 279/2002), submitted that on similar facts and in fact involving the same advocate (late Shri Dass) delay was condoned subject to the condition that the appellant would not be entitled to any interest on enhanced amount, solarium or additional amount (if, ultimately, the appeal is allowed) for the period of the delay. Without going into the merits of that case, we may state that even if the delay in that case was on account of the negligence of the same advocate, it does not at all follow that in every case the same advocate would act negligently. On the facts of that case the Division

Bench hearing the matter was of the view that delay ought to be condoned and Therefore it passed the conditional order. Here, we are of the view that the delay has not been sufficiently explained. Reference to the said order dated 9.5.2002 by the learned senior counsel is, Therefore, misplaced.

7. Next, Mr V.P. Singh referred to the decision of the Supreme Court in Jalandhar Improvement Trust v. State of Punjab and Ors. In particular he referred to the following portion in paragraph 5 thereof:-

"So far as the fact that in this case the 4th respondent's application for reference u/s 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent for differential treatment."

On the strength of this, Mr Singh contends that the belated appeals in the present case should also not make any difference and the appellant should not be treated differently from those who got the benefit in Rajiv Gupta's case (supra). This analogy, we are afraid, cannot be made. The facts situation in the two cases, the one before the Supreme Court and the one before us, are entirely different. Firstly, the Supreme Court had before it a case where co-owners were being given differential treatment in respect of the same land which belonged to all of them jointly. Secondly, in that case the 4th respondent on the one hand and the petitioners 2 to 5 on the other were intimately related. In fact, the 4th respondent was the mother of the petitioners 2 to 5. In the case before us, the appellant is not a co-owner of the lands in question in Rajiv Gupta's case (supra). Nor is he so intimately related. The special circumstances that prevailed in the case before the Supreme Court are non-existent in the case before us.

8. The learned senior advocate changed tack and placed before us a decision of a Division Bench of this court in the case of Shiv Dhan Singh v. Union of India to support his plea that there must be parity in the amount of compensation on the basis of the liability of the state. Which principle, according to him, stands incorporated in Article 300-A of the Constitution. In particular, he placed reliance upon paragraph 12 of the judgment in that case. According to him, the decision in Shiv Dhan Singh's case (supra) is an authority for the proposition being advanced by him that on the ground of parity the appellant herein must also be accorded the benefit of the enhanced compensation in Rajiv Gupta's case (supra) despite the fact of delay. We are unable to subscribe to this point of view.

9. As indicated in the judgment in Shiv Dhan Singh's case (supra) itself¹⁴, the claimants had sought a reference u/s 18 of the Land Acquisition Act, 1894. The reference was decided by the reference court. The claimants therein, being dissatisfied with the determination of compensation by the reference court, filed statutory appeals u/s 54 of the said Act before this court, which were dismissed in limine without any determination on merits. Further appeals to the Supreme

Court were also dismissed on the ground of delay as being barred by limitation. On the other hand other appeals arising out of the same award had not been dismissed in liming and had been admitted for hearing on merits. In respect of some other appeals which had also been dismissed in liming by this court, further appeals were preferred before the Supreme Court. When the matter of pendency of appeals (i.e., those which had not been dismissed in liming) in this court was brought to the notice of the Supreme Court, the appeals before it were remitted to this court for fresh disposal Along with the pending appeals in accordance with law. A Division Bench of this court heard and decided all the appeals (those which were pending post admission and those that were remanded by the Supreme Court) and disposed of the same by a common judgment delivered in *Jas Rath v. Union of India*. After this judgment was delivered, the claimants in Shiv Dhan Singh's case moved applications u/s 151 of the Code of Civil Procedure, 1908 in their disposed of appeals (which had earlier been dismissed in liming) seeking parity with the others and prayed that they be given the benefit of the judgment in *Jas Rath's* case (supra). This court, in these peculiar circumstances and purely on equitable considerations, allowed the applications and gave the claimants therein the benefit of the judgment in *Jas Rath's* case (supra). The questions before the court in that case were entirely different from the question of condensation of delay in the present case. In fact, section 5 of the Limitation Act, 1963 was not even referred to in the judgment in Shiv Dhan Singh's case (supra).

10. There is another aspect of the matter. In Shiv Dhan Singh's case (supra) the approach of the Division Bench of this court was thus:

"Therefore, the approach, which in such like cases has to be adopted is the one of equity to ensure that all persons who have been deprived of their land, since they can only be deprived in accordance with law, as envisaged under Article 300-A of the Constitution, the constitutional mandate is to tender such compensation, which is the true market value, as determined in accordance with law."

Article 300-A provides that "no person shall be deprived of his property save by authority of law". Surely, this implies that a person can be deprived of his property by authority of law. And, this authority of law definitely means a law made by a competent legislature. The Land Acquisition Act, 1894 read with the Code of Civil Procedure, 1908 and the Limitation Act, 1963 which prescribes a period of limitation for appeals is clearly such "law". So, if an appeal presented u/s 54 of the Land Acquisition Act, 1894 is dismissed on the ground of limitation, it does not mean that the provisions of Article 300-A of the Constitution would be violated. This is also not the ratio of the decision in Shiv Dhan Singh's case (supra).

11. The case of Shiv Dhan Singh (supra) was one decided purely on grounds of equity applicable to the peculiar facts of that case. But it is equally well settled that delay defeats equity. In this connection it would be appropriate to note the following observation of the Supreme Court in the case of *Hameed Joharan v.*

Abdul Salam

"It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favored rather than claiming disfavor. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are vigilant and not those who are indolent)."

So, the decision in Shiv Dhan Singh's case (supra) is of no assistance to the applicants herein on several counts.

12. Mr V.P. Singh, learned senior counsel for the appellant/ applicant lastly contended that in dealing with condensation of delay applications u/s 5 of the Limitation Act, 1963 the court should not adopt a hyper-technical or technical approach and the court ought to exercise its discretion, which it undoubtedly has, to advance substantive justice. And, accordingly in this case too the delay be condoned. He also submitted that a litigant must not suffer on account of inaction/ mistake of his advocate whom he is justified in trusting. In support of these arguments he cited three decisions of the Supreme Court :- *Concord Of India Insurance Co. Ltd. v. Smt. Nirmala Devi And Ors.*; *Collector, Land Acquisition v. Katiji*; *G. Ramegowda v. Special Land Acquisition Officer, Bangalore*. It would instructive to set out first, the provisions of section 5 of the Limitation Act, 1963 and, then, the relevant portions of the aforesaid judgments and then see as to what extent they govern the case at hand.

"5. 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.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining of computing the prescribed period may be sufficient cause within the meaning of this section." (underlining added)

In the *Concord of India* case (supra) the Supreme Court held:

"There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for laymen or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgment of one of us in *State of Kerala Vs. Krishna Kurup Madhava Kurup*,

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have been quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation." Mata Din Vs. A. Narayanan,

In Ramegowda's case (supra)(which also refers to the third case - the Katiji case (supra)), the Supreme Court observed as under:

"The contours of the area of discretion of the courts in the matter of condensation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., ; Shakuntala Devi Jain Vs. Kuntal Kumari and Others, ; Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, Mata Din Vs. A. Narayanan, ; Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condensation of the delay. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others,

When substantial justice and technical consideration 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....

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.

13. These decisions while clearly stating the law, in no way advance the case of the applicant/ appellant. For, while, in construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice, it is also true that the court still has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section. And, each case has to be considered on the particularities of its own special facts. The Supreme Court has also consistently

held that delays in preferring appeals are not to be condoned where there is gross negligence or deliberate inaction or lack of bona fides imputable to the party seeking condensation of the delay. The question of liberal interpretation and substantial justice would only arise when there is no gross negligence or deliberate inaction or lack of bona fides imputable to the party seeking condensation of the delay. In the present case, as indicated above, the Explanation of the applicant/appellant lacks credence. The allegation of negligence is sought to be foisted on an Advocate who is no more. The averments are bereft of material particulars and are sufficiently vague for us to conclude that, in the least, there was deliberate inaction and/or gross negligence on the part of the applicant/appellant himself. It is more so, because the applicant/ appellant is also an advocate. He cannot be imputed with ignorance of legal procedures and the level of innocence or naivete of a rustic villager.

14. In these circumstances, the delay of 11 years and 123 days cannot be condoned. Both the applications and consequently the relative appeals are dismissed. There shall be no order as to costs.