

(2013) 02 BOM CK 0116

In the Bombay High Court

Case No : Chamber Summons No. 1649 of 2006 in Arbitration Petition No. 66 of 1991 in Award No. 172 of 1990

Ravji Khimji Chheda and Others

APPELLANT

Vs

Kesarben Laxmichand Dedhia and Others
 Kantilal
Ravji Chheda and Others Vs Sunderben Keshavji Shah and
Others

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Arbitration Act, 1940 — Section 17
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9, 115
Limitation Act, 1963 — Section 5

Citation : (2013) 4 BomCR 218

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Hiralal Thakkar, assisted with Mr. Vishal Thakkar, Mr. Bhavin Gada, instructed by M/s. Harkchand and Co. in Chamber Summons, for the Appellant; S.U. Kamdar , a/w. Mr. G.R. Joshi, Ms. Heena Chheda, Avdhoot Prabhu and Mr. Anirudh Hariani, instructed by . Hariani and Co., for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this Chamber Summons filed by the applicants under Order 22 Rule 9 of the Code of Civil Procedure, 1908, the applicants seek setting aside of abatement of arbitration petition dismissed by orders dated 13th September, 2005 and 26th September, 2005 and also seek condonation of delay of 676 days in taking out Chamber Summons for bringing the heirs and legal representatives of deceased petitioner no. 2, 1707 days delay in taking out Chamber Summons for bringing the heirs and legal representatives of deceased petitioner no. 3 and 3200 days delay in taking out Chamber Summons for bringing the heirs and legal representatives of deceased petitioner no. 1 and 284 days delay in taking out Chamber Summons for bringing the heirs and legal representatives of deceased respondent no. 2. Some of the relevant facts for the purpose of deciding this Chamber Summons are as under :-

Original petitioner nos. 1 to 4 viz. Mr. Ravji Khimji Chheda, Mr. Visanji Khimji Chheda, Mr. Shamji Khimji Chheda and Mr. Padamsey Khimji Chheda were brothers and were cousins of petitioner no. 5. By an agreement dated 4th March, 1964 and 3rd December, 1968, the original petitioner nos. 1 and 3 agreed to purchase land situate at Piston Sagar, Chembur, admeasuring 132 acres and 36 gunthas. On 27th November, 1978 a suit (1562 of 1978) came to be filed by Rustom Dalal and others against Union of India in respect of a larger property. The original petitioner nos. 1 and 3 herein were plaintiff nos. 5 and 4 respectively in the said suit. By an agreement for sale dated 31st May, 1984, original petitioner nos. 1 and 3 agreed to sell property at Chheda Nagar, Peston Sagar situate at Chembur to original respondent nos. 1 and 2 viz. Laxmichand Liladhar Dedhia and Keshavji Palan Shah respectively. The said agreement for sale was executed by the original petitioner nos. 1 and 3 and was witnessed by the original petitioner nos. 2, 4 and 5.

2. By a separate writing dated 30th June, 1984 executed by the original petitioner nos. 2, 4 and 5, the agreement for sale dated 31st May, 1984 was confirmed. By a Supplementary Agreement dated 18th August, 1986, the original petitioners and the original respondent nos. 1 and 2 agreed to amend and/or modify some clauses of the said Agreement for Sale dated 31st May, 1984.

3. Certain disputes and differences arose between the petitioners and respondent nos. 1 and 2 in connection with the terms and conditions of the agreement dated 31st May, 1984 and the supplementary agreement dated 18th August, 1986. On 2nd January, 1989, original petitioners and original respondent nos. 1 and 2 signed the arbitration agreement and agreed to refer the disputes and differences to the arbitration of the two arbitrators viz. Mr. Ravilal Sanghoi and Mr. Shantilal Meckoni respectively.

4. On 25th April, 1989, the learned arbitrator made and published their award.

5. On 17th July, 1991, the original respondent nos. 1 and 2 filed Chamber Summons No. 653 of 1991 in Suit No. 1562 of 1978 to join as defendants to the said suit. The award dated 25th April, 1989 was filed in this court and numbered as Award No. 172 of 1990. On 1st April, 1991, the original petitioners filed arbitration petition (66 of 1991) in this court to set aside the said award dated 25th April, 1989 against the original respondents. On 1st April, 1991, the original respondent nos. 1 and 2 filed arbitration petition (125 of 1991) against the original petitioners inter alia seeking certain reliefs for protecting the said property.

6. By an order dated 10th September, 1991, the original petitioners were restrained from in any manner dealing with or parting with possession of or alienating or encumbering or creating any title or interest in favour of anyone else or transferring or inducting anyone into or putting up any construction on the said plot of land for a period of two weeks after disposal of the Arbitration Petition No. 66 of 1991.

7. On 12th June, 1997 Keshavji Palan Shah, the original respondent no. 2 expired. On 10th December, 1997 Ravji Khimji Chheda, the original petitioner no. 1 expired. On 23rd January, 1998, the original petitioner no. 3 Shamji Khimji Chheda who was plaintiff no. 4 in Suit No. 1562 of 1978 took out Chamber Summons No. 98 of 1998 for deleting the name of plaintiff no. 5 i.e. original petitioner no. 1 (Ravji Khimji Chheda) who had expired on 10th December, 1997 and for bringing on record the legal heirs of plaintiff no. 5 in (original petitioner no. 1 in this proceedings) in suit No. 1562 of 1978. Affidavit in support of the said Chamber Summons was affirmed by the original petitioner no. 3 in the court in the said proceedings. By an order dated 16th March, 1998, the said Chamber Summons (98 of 1998) in Suit No. 1562 of 1978 was allowed by the Additional Prothonotary and Senior Master.

8. On 17th April, 1998, a Notice of Motion (1667 of 1998) in Suit No. 1562 of 1978 was taken out by the plaintiff therein for allowing the plaintiffs to put up a barb wire fencing/boundary wall around the suit property. Affidavit in the said Notice of Motion was filed by the Plaintiff No. 4 (original petitioner no. 3 Shamji Khimji Chheda) which affidavit was affirmed in court. On 6th March, 1999, the original petitioner no. 3 also filed affidavit of documents in the said suit (1562 of 1978) which affidavit was affirmed in court.

9. On 20th April, 1999, the original petitioner no. 3 took out a Chamber Summons (608 of 1999) for deleting name of plaintiff no. 1 Rustom Dalal in Suit No. 1562 of 1978, who expired on 24th May, 1998. The said affidavit was affirmed by the original petitioner no. 3 in court. On 12th January, 2002, the original petitioner no. 3 Shamji Khimji Chheda expired. On 9th May, 2002, the applicant took out Chamber Summons (572 of 2002) in suit no. 1562 of 1978 to delete the name of plaintiff no. 4 (original petitioner no. 3). By an order dated 24th September, 2002, the said Chamber Summons (572 of 2002) in suit No. 1562 of 1978 was allowed.

10. On 27th June, 2003 applicant no. 15 filed Chamber Summons No. (780 of 2003) in Suit No. 1562 of 1978 for setting aside the abatement order dated 10th February, 2003 against the deceased plaintiff no. 4 (original petitioner no. 3) and for permitting the applicant no. 15 to carry out the amendment so as to bring on record legal heirs of the plaintiff no. 4 (original petitioner no. 3). In para 8 of the affidavit in support dated 27th June, 2003 filed by the applicant no. 15, it was stated on oath that he was the only one of the heirs of the late original plaintiff no. 4 who was at all apprised of the facts of the case and able to attend to the matter. The said chamber summons (780 of 2003) was made absolute by the order dated 4th September, 2003 in the said suit (1562 of 1978).

11. On 24th September, 2004, a Memorandum of Understanding was executed between Bhupen Chheda (applicant no. 15 in the present proceedings) as the owner therein on the one part and Sunil Mantri HUF as the developer therein of the other part.

12. On 9th November, 2004, Visanji Khimji Chheda (original petitioner no. 2) expired. On 13th September, 2005, Arbitration Petition No. 66 of 1991 appeared on the Board of Mr. Justice D.K. Deshmukh (as His Lordship then was).

13. On 13th September, 2005 this court passed an order that petition in respect of original petitioner no. 1, 2 and 3 stood abated as no application for bringing their legal representatives was made as per the time allowed by law. This court directed the matter to be put up next week for final hearing.

14. On 23rd September, 2005 the legal heirs of the original petitioner nos. 1, 2 and 3 filed Chamber Summons (1245/2005) inter alia praying for condonation of delay of 2747 days for taking out the said Chamber Summons and for setting aside the abatement order dated 13th September, 2005. The said Arbitration Petition (66 of 1991) thereafter appeared on board on 26th September 2005 and this Court disposed of the said petition by passing following order :-

Admitted facts are that the Petitioner No. 1 has died six years back and the Petitioner No. 2 and Petitioner No. 3 have died three years back. Therefore, the petition by them has abated long back. Respondent No. 2 has died in the year 1997. Therefore, petition has abated as against the Respondent No. 2 long back.

2. The learned Counsel appearing for the Respondents relying on the judgment of the Supreme Court in case of Sri Chand and ors. v/s. M/s. Jagdish Pershad Kishan Chand and ors. AIR 1966 SC 1427 submits that as a result of death of Petitioners Nos. 1, 2 & 3, not only petition by them abates, but the entire petition gets abated. He further submits relying on judgment of the Supreme Court in the case of The State of Punjab Vs. Nathu Ram, that the award is made in favour of the Respondents Nos. 1 & 2 and as the Respondent No. 2 has died and petition as against him has abated, entire petition stands abated. The learned Counsel appearing for the Petitioner is not a position to dispute the proposition advanced by the learned Counsel for the Respondents, therefore accepting the contentions raised by the learned counsel for the Respondents, petition is disposed of.

15. Being aggrieved by the order dated 26th September, 2005, the legal heirs of the original petitioner nos. 1, 2 and 3 filed Appeal (1058 of 2005) in this court for setting aside the said order. Original petitioner nos. 4 and 5 filed a separate appeal (1057 of 2005) against the said order dated 26th September, 2005. By an order dated 29th November, 2005 passed by the Division Bench of this court, the Appeal (1057 of 2005) filed by the original plaintiff no. 4 and 5 came to be dismissed. The Division Bench held that the rights of the surviving parties were inseparable with the rights of the deceased parties and thus no infirmity was found in the order passed by the learned Single Judge holding that the petition had abated in its entirety. Order passed by passed by the Division Bench reads thus :-

After having heard the learned counsel for the appellants, we are satisfied that no interference is called for in the impugned order dated 26th September, 2005. The petitioner Nos. 1, 2 and 3 and the respondent nos. 2 died long back. Their

legal representatives were not brought on record within time and as a result thereof, the arbitration petition abated in respect of the deceased parties. Since the rights of the surviving parties were inseparable with the rights of the deceased parties, the learned Single Judge in the impugned order held that the petition has abated in its entirety. We find no infirmity in the said order.

2. However, we are informed that chamber summons has been taken out by the legal representatives of the deceased-petitioners for setting aside the abatement and the said Chamber summons is pending. We observe that in case the said chamber summons is granted by the Chamber Judge and the abatement in respect of the deceased-petitioners and the deceased respondent is set aside then in that event, the impugned order dated 26th September, 2005 shall be rendered ineffective and the arbitration petition No. 66 of 1991 shall be restored to file for fresh consideration in accordance with law.

3. With the aforesaid observations, the appeal is dismissed.

4. Needless to say that impugned order shall have no bearing on the consideration of the chamber summons and all contentions in the chamber summons are kept open to be agitated before the learned Chamber Judge.

16. In view of the order passed by the Division Bench in Appeal (1057 of 2005) filed by the original petitioner nos. 4 and 5, the Division Bench disposed of the appeal No. 1058 of 2005 filed by the legal heirs of the original petitioner nos. 1 to 3 by holding that the said appeal also did not deserve to be admitted and shall be treated as disposed of in terms of the order passed in Appeal No. 1057 of 2005.

17. On 17th October, 2005, the original respondent nos. 1 and 2 filed Arbitration Petition (380 of 2005) in this court inter alia praying that award dated 25th April, 1989 be made rule of the Court u/s 17 of the Arbitration Act, 1940. By an order dated 14th November, 2005, this court allowed the said petition (380 of 2005) and passed a decree in terms of the award.

18. On 21st December, 2005, the Chamber Summons (1245 of 2005) appeared for hearing and final disposal. By an order dated 21st December, 2005 this court at the request of the petitioner allowed the said Chamber Summons (1245 of 2005) to be withdrawn with liberty. On 19th December, 2006, applicant no. 1 Kantilal Ravji Chheda preferred an Appeal (1056 of 2006) against order dated 14th November, 2005 passed in Arbitration Petition (380 of 2005).

19. On 21st December, 2006, the original petitioner nos. 4 and 5 and the legal heirs of the original petitioner nos. 1 to 3 filed fresh Chamber Summons (1649 of 2006) inter alia praying for condonation of delay of 676 days in respect of original petitioner no. 2, 1707 days delay in respect of petitioner no. 3, 3200 days delay in respect of petitioner no. 1 and for setting aside abatement order dated 13th September, 2005 in respect of original petitioner nos. 1, 2 and 3.

20. On 1st April, 2008 the applicant nos. 1 to 3 were allowed to withdraw appeal

(1056 of 2006) with liberty to approach the court again in case need arises in the matter, depending upon the circumstances and in order to enable the applicants to pursue the proceedings initiated by them for setting aside abatement in arbitration petition.

21. On 20th August, 2008, legal heirs of petitioner nos. 1 to 3 and petitioner nos. 4 and 5 took out Chamber Summons (319 of 2008) inter alia praying for amendment in Chamber Summons No. 1649 of 2008 in regard to condonation of delay for bringing legal heirs of original respondent no. 2 on record. By an order dated 21st August, 2008, this court allowed the said Chamber Summons (319 of 2008) and allowed the applicant to amend the prayer of Chamber Summons (1649 of 2006) and permitted to apply for condonation of delay of 284 days in taking out Chamber Summons (1649 of 2006) for bringing the heirs and legal representatives of deceased respondent no. 2.

22. Mr. Hiralal Thakkar, the learned senior advocate appearing on behalf of the applicant submits that the original petitioner nos. 1 to 3 were not aware of the disputes between the petitioners and the respondents till May 2004 and did not have all the documents pertaining to the suit property which were subject matter of the arbitration proceedings till November 2006. The learned counsel submits that the arbitration proceedings had last appeared on Board on 14th December, 1992 and was adjourned to 15th February, 1993 and thereafter appeared on Board suddenly on 5th September, 2005 after a period of 12 years and 9 months for direction. The 1st applicant received a phone call from his cousin that he had received a phone call from Mr. Sandeep Vimadalal, advocate of M/s. Vimadalal & Co. who had informed him that the arbitration petition had come up on board. It is the case of the applicant that applicant no. 15 immediately contacted the said advocate to enquire about the matter when he was told that the said advocate would not attend the matter since he had returned the papers and proceedings in the matter to the original petitioner no. 3 during his lifetime several years ago.

23. It is the case of the applicant that applicant no. 15 thereafter searched papers and proceedings in his office where his father during his lifetime was sitting and found some papers on 12th September, 2005. He immediately contacted Mr. Avinash D. Kango, advocate and instructed him to prepare and make an application for bringing the heirs and representatives of the petitioner nos. 1 to 3 and respondent no. 2 on record of the proceedings and filed Chamber Summons No. 1245 of 2005 on 21st September, 2005 inter alia praying for setting aside the order dated 13th September, 2005 for abatement and for bringing legal heirs of petitioner nos. 1, 2 and 3 and respondent no. 2 on record.

24. The learned senior counsel submits that applicant nos. 1 to 7 are the heirs and legal representatives of the deceased petitioner no. 1. Applicant nos. 8 to 12 are the heirs and legal representatives of deceased petitioner no. 2. Applicant nos. 13 to 19 are the heirs and legal representatives of deceased petitioner no. 3. It is the case of the applicants that during the course of the hearing of the petition on 20th September, 2005, the learned counsel for respondent no. 2

furnished the names of the heirs and legal representatives of the deceased respondent no. 2 who expired on 12th June, 1997. It is the case of the applicant that in the year 1997, when the petitioner no. 1 expired, petitioner nos. 1 to 3 were of old age and infirmity. In 1997, petitioner no. 1 was of 77 years of age and 3rd petitioner was of 75 years of age. Health of both the petitioner i.e. no. 1 and 3 was falling. Both the petitioners were also physically and mentally weak and in October, 1995, petitioner no. 3 had sustained a fracture neck of femer (left leg) and till 1997 was not recovered fully and was advised complete bed rest and regular physiotherapy. The learned senior counsel submits that in Suit NO. 1562 of 1978, this court had passed an order allowing petitioner nos. 1 and 3 to be examined on commission. One Dr. Mahesh Jhaveri had also issued a certificate which was annexed to the affidavit in support of the Chamber Summons No. 1021 of 1997 in Suit No. 1562 of 1978 certifying that both the petitioners had become irresolute.

25. The learned senior counsel then submits that when the petitioner no. 1 died on 10th December, 1997, petitioner nos. 2 and 3 were also of old age and infirmity and were mentally and physically weak and were not in proper state of mind. Petitioner no. 3 was a cancer patient and was suffering since long. It is submitted that in the year 1998, petitioner no. 3 had sustained a fracture at heap bone and was admitted to the hospital in the year 1999, for treatment and ultimately died on 12th January 2002 at the age of 79.

26. The learned senior counsel submits that since September 2005, till date of hearing of Chamber Summons, the applicant No. 15, his family members and other heirs of his late father were searching for his medical papers, x-ray, reports etc. pertaining to his medical treatment pertaining to his health but could not locate the same. It is the case of the applicant that the medical papers were destroyed during the flood. It is the case of the applicants that during the period 2002 - 2003, the petitioner no. 2 and his wife were also not keeping well and were ill. Wife of petitioner no. 2 was suffering from lung cancer and was also suffering from breathing problem and was bed ridden. It is submitted that wife of petitioner no. 2 was frequently taken to nursing home for treatment and was bed ridden and ultimately died on 2nd November, 2004. Petitioner no. 2 died on 9th November, 2004. The learned senior counsel submits that since the matters and the transactions pertaining to the property at Chheda Nagar were being handled by the petitioner nos. 1 and 3, petitioner nos. 2, 4 and 5 were not aware of the whereabouts of the documents pertaining to the said properties at Chheda Nagar and also the papers and proceedings as regards dispute with respondents and with salt Commissioner.

27. The learned senior counsel submits that the applicant had already taken out Chamber Summons in the year 2002, when applicant no. 15 came to know about the proceedings in Suit No. 1562 of 1978 for bringing heirs and legal representatives of the petitioner no. 3 herein who was plaintiff no. 4 therein. It is submitted that it is thus clear that no sooner the applicant no. 15 came to know

about the pendency of suit no. 1562 of 1978 in which petitioner no. 3 herein was a party, a Chamber Summons was taken out for bringing legal heirs on record and no sooner the applicant came to know about the present arbitration petition, the Chamber Summons was taken out immediately for appropriate relief. It is submitted that the applicant could not have been benefited of any delay in taking out Chamber Summons.

28. Mr. Thakkar, the learned senior counsel then submits that the original petitioner nos. 1 and 3 had agreed to purchase and purchased the large piece of land at Chheda Nagar, Ghatkopar for and on behalf of others such as public charitable trusts, private trusts and several individuals belonging to their Kutchi community, details whereof were setout in the statement at Ex. "10" to the affidavit of support and details of 35 deeds of conveyances were setout in Ex. 12. It is submitted that since 1964 till 1978, petitioner nos. 1 and 3 had executed several deeds of transfers and conveyances representing the purchasers in respect of the large piece of land, details whereof are setout in the statement annexed at Ex. 16 to the affidavit in support. The learned senior counsel submits that there were disputes among the family members and various legal matters other than the disputes between the petitioners and the respondents were pending. It is submitted that petitioner nos. 1 and 3 and not petitioner nos. 4 and 5 were handling the matters pertaining to the property at Chheda Nagar. It is submitted that petitioner nos. 4 and 5 were not aware of separate, distinct and independent rights and title of each of the petitioners as regards the plots of land owned and possessed by them and plots of land in question in the arbitration petition. It is the case of the applicant that petitioner nos. 4 and 5 had to search for those documents and papers and study them to find true and correct facts and status as regards title and rights in respect of the disputed sub-divided plots of land in question. It is the case of the applicant that it was found during the search of the documents and papers that there were more than 600 files, several municipal documents, files, architect's files, files containing agreements, deed of conveyances and deeds transfers, other deeds, several letters of allotment, several other letters, correspondence, four layout subdivision sanctioned plans as sanctioned by Municipal Corporation of Greater Mumbai.

29. The learned senior counsel submits that the Chheda family being a big family, it was not possible to convince each member of the legal matters which caused delay of 90 days to take out appropriate proceedings and such delay was not deliberate, intentional or malafide on the part of the applicant or the petitioner nos. 4 and 5. it is submitted that cause of action in the petition survives and surviving petitioners being petitioner nos. 4 and 5 were entitled to continue to prosecute the arbitration proceedings and there could not be any abatement and the proceedings does not abate in so far as the surviving petitioners i.e. petitioner nos. 4 and 5 are concerned.

30. Mr. Thakkar, the learned senior counsel submits that only petitioner nos. 1 and 3 who were in charge of the matter were aware of the proceedings and the

transactions between the petitioners and the respondents. The legal heirs of the petitioner nos. 1 and 3 were not aware of the pending litigation including the arbitration proceedings. It is submitted that the procedure under Order 22 of the CPC is designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. The learned counsel submits that the court should not proceed with the tendency of finding fault with cause shown and reject the chamber summons by slip short orders. The learned counsel submits that the court should give liberal interpretation to expression "sufficient cause" to ensure that substantial justice is done. The learned senior counsel submits that the length of delay in taking out chamber summons is of no significance as the applicants have explained the reasons as to why the applicants could not take out the proceedings in earlier point of time for want of knowledge about the pendency of the proceedings and for want of documents. The learned senior counsel submits that the third party rights are already created in respect of most of the properties and if the order of abatement is not set aside, it would create hardship and would result in foreclosing the rights of the applicants. It is submitted that the court has to strike balance between result and effect of the order. The learned senior counsel submits that the court has to do substantial justice to the parties by disposing of the matters on merits as the sufficient cause is shown by the applicants for setting aside the abatement order. It is submitted that the delay in taking out the application for setting aside abatement is not occasioned deliberately or on account of culpable negligence or on account of mala fides. It is submitted that in the matter of abatement of the proceedings under Order 22 of Code of Civil Procedure, the court shall have lenient approach in the matter.

31. The learned senior counsel placed reliance upon the following judgments in support of the aforesaid submissions :

1. Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, ;
2. Sital Prasad Saxena (Dead) by Lrs. Vs. Union of India (UOI) and Others,
3. Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others,
4. P.C. Ray and Co. (India) Pvt. Ltd. Vs. Union of India (UOI), .
5. 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, .
6. Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs. and Others, .

32. Mr. S.U. Kamdar, learned senior counsel and Mr. G.R. Joshi learned counsel appearing for respondents on the other hand submits that when petitioner no. 1 expired on 30th December, 1997, petitioner nos. 2 to 5 were alive. Even if the case of the applicant is accepted that the original petitioner nos. 1 and 3 were in charge of the matter when the petitioner no. 1 expired, petitioner no. 3 could have taken out the proceedings for bringing his legal heirs on record. The

learned counsel pointed out that on 23rd January, 1998, the original petitioner no. 3 had filed affidavit in chamber summons no. 98 of 1998 in Suit No. 1562 of 1978 in this court. It is submitted that on 12th January, 2002 the original petitioner no. 3 died. The applicant No. 15 who is the son of the original petitioner no. 3 had taken out chamber summons bearing No. 780 of 2003 in Suit No. 1562 of 1978 for bringing the legal heirs on record. It is submitted that when the original petitioners Nos. 1 and 3 died, petitioner nos. 2, 4 and 5 were alive. Petitioner nos. 4 and 5 are alive even today. They were fully aware of the proceedings. They had signed the proceedings and thus could have taken out the proceedings for setting aside abatement within time prescribed. The learned counsel submits that the issue as to whether the petition against the petitioner nos. 4 and 5 also abated or not is no longer res integra and the said issue has already been decided by the appeal court. The learned counsel submits that the petition abates as a whole in view of the nature of reliefs sought for. The dispute was in respect of the specific performance of the contract. The part of the award thus cannot be set aside hence, entire proceedings abated. It is submitted that the argument of the original petitioner nos. 4 and 5 that the petition did not abate against them was not accepted by the Division Bench of this court. It is submitted that the Chamber Summons has been taken out only by legal heirs of petitioner nos. 1 to 3. The learned counsel submits that the applicants are claiming through original petitioner nos. 1 and 3 and their rights cannot be superior than those of the original petitioner nos. 1 to 3. It is submitted that as petitioner nos. 1 to 3 were negligent, the applicant cannot get rights superior than the rights of the petitioner nos. 1 to 3. It is submitted that there is no explanation for the delay between 10th December, 1997 and 12th January, 2002 in the affidavit in support. The learned counsel invited my attention to paragraphs 16 to 18 of the affidavit in support of the Chamber summons. It is submitted that the record does not show about alleged ill health of petitioner no. 3. The pleadings are devoid of particulars and proofs.

33. The learned counsel for respondents submit that the applicant no. 15 who is the son of the original petitioner no. 3 had filed an affidavit in Chamber summons No. 780 of 2003 in Suit No. 1562 of 1978. In his affidavit in support dated 27th June, 2003 he has deposed that he was the only one of the heirs of the original petitioner No. 3 herein (Plaintiff No. 4 in the said suit) who was apprised of the facts of the case and able to attend to the matter. The learned counsel submits that the first Chamber summons was taken out on 23rd September, 2005 and was withdrawn on 23rd December, 2005 with liberty to file fresh chamber summons. The second Chamber Summons was taken out after one year. The learned counsel submits that the plea of lack of knowledge or want of documents raised by the applicants in the affidavit in support is totally false and contradictory. In Para 9 and 18 of the affidavit in support, it is alleged that the applicants came to know about the pending proceedings in the month of May, 2004 whereas in rejoinder filed by the applicants, it is alleged that they came to know about the proceedings in the month of September, 2005. The learned

counsel invited my attention to the letter dated 16th September, 2008 addressed by M/s. Haridas & Co. the ex-advocates of the applicant to M/s. Harakchand & Co. the present advocates of the applicants. In the said letter the ex-advocates had recorded that two files containing copies of 45 documents out of which 38 documents were conveyances and three documents were leases which were given to the said advocates by the applicants in the month of January, 2005. It is further recorded that the copies of P.R. Records and 7/12 extracts of the said property were given to them in the month of March, 2005 which were for the entire Chhedanagar property and not for individual subdivided plots. The learned counsel also invited my attention to the affidavit in rejoinder of applicant no. 15 and more particularly paragraph 4 in which it was deposed that he could find the documents only during the period from December, 2005 and December, 2006 to show distinct, separate and independent rights of each of the petitioners and to have the order of abatement set aside. The learned counsel thus submits that the affidavit is on the face of it false and inconsistent with the contents of the letter addressed by the ex-advocates of the applicants. The learned counsel also invited my attention to Para 21 of the affidavit in support of the Chamber summons and submits that for the purpose of taking out Chamber summons for setting aside the abatement, it was not necessary to go through number of files as falsely alleged by the applicants. The applicants were fully aware of the arbitration proceedings and the same were referred in the memorandum of understanding dated 24th September, 2004 entered into between Bhupen Chheda, applicant No. 15, Sunil Mantri, HUF in respect of some of the properties. The learned counsel invited my attention to recitals 9 and 10 and clauses 9, 16, 17, 20 of the said MOU. It is submitted that the said MOU was signed by the applicant No. 15. In clause 20 of the said MOU it was categorically recorded that by expressly relying upon the correctness of the covenants, assurances and declarations of the Owners, the Developers had agreed to enter into the present Memorandum of Understanding with the Owners. These statements and declarations form the basis of the said MOU. The applicants had suppressed the said MOU in the affidavit in support. The respondents had brought the said documents on record to show that the applicants were fully aware of the arbitration proceedings. It is not in dispute that the said MOU was executed by the applicant No. 15 who has signed the affidavit in support of the present chamber summons.

34. The learned counsel for the respondents further points out that the explanation given by the applicant in affidavit in support pleading ignorance about the pendency of the court proceedings is totally false. Petitioner Nos. 1 and 3 who were parties to the said proceedings filed in the year 1978, was for larger property. The original petitioner no. 3 at least on two occasions had personally attended the court for filing affidavits. It is submitted that petitioner nos. 4 and 5 who are alive even today, did not file any affidavit in support of the chamber summons explaining as to why they did not take out any proceedings for setting aside abatement of the arbitration petition though they had also signed

arbitration petition. The learned counsel submits that the excuse given by the applicants that all the documents were not available with them and therefore, they were unable to file chamber summons, for setting aside abatement of the arbitration petition till such documents were available, is totally frivolous as no such documents were relevant for the purpose of filing chamber summons for setting aside abatement. The learned counsel submits that the explanation given in rejoinder and arguments of the applicants, that MOU signed by applicant no. 15, was without his knowledge about pending proceedings and that he had not given any instruction to the solicitors to draft the said MOU, is also on the face of it false and inconsistent. It is submitted that applicant no. 15 was signatory to the said document in which there was reference to the arbitration proceedings and he had given various personal assurances about his title in the suit property thus cannot be allowed now to plead ignorance of the contents of the said document. The learned counsel submits that the person who has filed false affidavit and has not come to this court with clean hands, is not entitled to be shown any leniency and this court shall not use its discretionary power for setting aside the abatement of the petition in such gross case. It is submitted that in this case, there was gross negligence, inaction and lack of bona fides on the part of the applicants and thus the delay in taking out the Chamber summons shall not be condoned by exercising discretionary powers of this court. The learned counsel appearing for the respondent placed reliance upon the following judgments :

- (1) Grasim Industries Ltd. and Another Vs. Agarwal Steel, ,
- (2) Ramkanya Bai Vs. Bharatram, ;
- (3) Ajit Singh Thakur Singh and Another Vs. State of Gujarat, ;
- (4) Balwant Singh (Dead) Vs. Jagdish Singh and Others, ;
- (5) Binod Bihari Singh Vs. Union of India, ;
- (6) Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another, ;
- (7) Ravji Khimji Chheda and Ors. Vs. Kesarben Laxmichand Dedhia and Ors. Chamber Summons No. 1649 of 2006 in Arbitration Petition No. 66 of 1991.

35. Paragraph 6 of the judgment in case of Sital Prasad Saxena (supra) relied upon by the applicants reads thus :-

6. We heard Mr. S.S. Khanduja, learned counsel for the appellants and Mr. G.D. Gupta, learned counsel for the respondents. Approach to the applications seeking condonation of delay in moving the application for substitution of parties who died during the pendency of civil appeal in the High Court has to be as observed by this Court in Bhagwan Swaroop and Others Vs. Mool Chand and Others, and Hansraj VS . Sunderlal Agarwal, (1982) 1 SCC 476 . In the present case the High Court unfortunately committed an error in rejecting the application for condoning

the delay. It is the High Court which had to satisfy itself that the petitioner made out sufficient cause which prevented him from moving the application for substitution in time and not the trial Court. The High Court may call for report of the trial Court but then cannot adopt the approach of a court exercising revisional jurisdiction. It must examine the material collected by the trial Court and come to its own conclusion. In this case the High Court observed that it was not persuaded to take a view different from the one taken by the trial Court. This is impermissible. The second error was that once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.

36. Paragraphs 10 to 12 of the judgment of the Supreme Court in case of Ram Nath Sao alias Ram Nath Sahu and Ors. (supra) relied upon by the applicants read thus :-

10. In the case of N. Balakrishnan Vs. M. Krishnamurthy, , there was a delay of 883 days in filing application for setting aside exparte decree for which application for condonation of delay was filed. The trial court having found that sufficient cause was made out for condonation of delay, condoned the delay but when the matter was taken to the High Court of Judicature at Madras in a revision application u/s 115 of the Code, it was observed that the delay of 883 days in filing the application was not properly explained and it was held that the trial court was not justified in condoning the delay resulting into reversal of its order whereupon this Court was successfully moved which was of the view that the High Court was not justified in interfering with order passed by trial court whereby delay in filing the application for setting aside exparte decree was condoned and accordingly order of the High court was set aside. K.T. Thomas, J., speaking for the Court succinctly laid down the law observing thus in paras 8, 9 and 10: (SCC p.127)

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. 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 uncontrollable 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 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.

10. ...

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

(Emphasis added)

11. The Court further observed in paragraphs 11, 12 and 13 which run thus:- (SCC pp. 127-28)

11. 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. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest republic up sit finis lithium (it is for the general welfare that a period be put to litigation. Rules of limitation are not meant to destroy the rights of the parties. They are ment to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, .

13. 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 at most 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.

(Emphasis added)

12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. 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 jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bone fide 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 list 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.

37. Paragraph 3 of the Judgment of the Supreme Court in case of Collector Land Acquisition, Anantnag and another (supra) reads thus :-

3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 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) 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. 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 mala fides. 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grate status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be

evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

38. The applicants have also placed reliance upon the judgment in case of Perumon Bhagvathy Devaswom Perinadu Village (supra). The said judgment would be considered by this court alongwith judgment referred to and relied upon by the respondents.

39. The applicant placed reliance upon the judgment of Calcutta High Court in case of P.C. Ray and Co. Pvt. Ltd. (supra) and also judgment of Supreme Court in case of S. Amarjit Singh Kalra and Ors. (supra) on the issue of res judicata and on the issue of joint interest of parties which are not relevant in my view for the purpose of deciding the issue of abatement of petition.

40. I should also refer to some of the judgments relied upon by the respondents in support of their various submissions. Paragraph 6 of the judgment of the Supreme Court in case of Grasim Industries Ltd. (supra) which reads thus :-

6. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document Ex. D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law.

41. Paragraph 6 of the judgment of the Supreme Court in case of Ajit Singh Thakur Singh and another (supra) relied upon by the respondents reads thus :-

6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an

appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed - and that was long after limitation had expired - that the case was fit for appeal by the State Government. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.

42. Paragraphs 26, 27 and 33 to 39 of the judgment in case of Balwant Singh (supra) relied upon by the respondents read thus :-

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial

discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

33. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

34. Liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997]

35. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]

37. We feel that it would be useful to make a reference to the judgment of this Court in *Perumon Bhagvathy Devaswom* (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High

Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application u/s 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under: (SCC pp. 329-30)

(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (*supra*)

38. Above are the principles which should control the exercise of judicial

discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

39. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court.

43. Paragraph 10 of the judgment of the Supreme Court in case of Binod Bihari Singh (*supra*) relied upon by the respondents reads thus :-

10. After giving our anxious consideration to the facts and circumstances of the case, we do not find any reason to interfere with the decision of the High Court. In our view, the High Court has rightly held that the application made by the appellant was an application for directing the arbitrator to file the award in Court so that such award is made a rule of Court. In this case, there was no express authority given by the arbitrator to the applicant to file the award to make it a rule of Court although a signed copy of the award was sent to the applicant. The forwarding letter clearly indicates that the award was sent for information. Accordingly, the decision of this Court made in Kumbha Mauji's case (*supra*) is applicable. The High Court has given very cogent reasons which, we have indicated in some details, for not accepting the case of the appellant that he had received a signed copy of the award and the forwarding letter some time in May, 1965 and we do not find any reason to take a contrary view. The applicant has not produced the registered cover received by him which would have established the actual date of the receipt of the postal cover by the applicant convincingly. We are also not inclined to hold that the delay in presenting the application

deserves to be condoned in the facts and circumstances of the case. The appellant has taken a very bold stand that he had received the signed copy of the award only in May, 1965 and only within three weeks of such receipt, he had filed the application. On the face of such statement, the plea of ignorance of the change in the Limitation Act need not be considered and accepted. As the case sought to be made out by the appellant that he had received the signed copy of the award only in May, 1965 has not been accepted, and we may add, very rightly by the Court, the question of condonation of delay could not and did not arise. In our view, it is not at all a fit case where in the anxiety to render justice to a party so that a just cause is not defeated, a pragmatic view should be taken by the Court in considering the sufficient cause for condonation of delay u/s 5 of the Limitation Act. Coming to the contention of Mr. Ranjit Kumar that to defeat a just claim of the appellant, the ignoble plea of bar of limitation sought to be raised by the respondent should not be taken into consideration, we may indicate that it may not be desirable for the government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen. But if a claim is barred by limitation and such plea is raised specifically the court can not straightway dismiss the plea simply on the score that such plea is ignoble. A bar of limitation may be considered even if such plea has not been specifically raised. Limitation Act is a statute of repose and bar of a cause of action in a court of law, which is otherwise lawful and valid, because of undesirable lapse of time as contained in the Limitation Act, has been made on a well accepted principle of jurisprudence and public policy. That apart, the appellant, in this case, having taken a false stand on the question of receipt of the signed copy of the award to get rid of the bar of limitation, should not be encouraged to get any premium on the falsehood on his part by rejecting the plea of limitation raised by the Respondent. We may also indicate here that the High Court is justified in its finding that the objection petition has been filed within time by the respondent and the service of the copy of the application made by the appellant on the counsel of the respondent who had appeared in an earlier proceeding did not constitute a notice as contemplated under Article 119(b) of the Limitation Act. In the aforesaid circumstances, the appeal must fail and is dismissed but we make no order as to costs.

44. Paragraphs 11 to 14 and 32 of the judgment in case of Pundlik Jalam Patil (supra) relied upon by the respondents reads thus :-

11. Whether the respondent made incorrect statement in the application seeking condonation of delay? There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed Counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent No. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award.

This averment in the application on the face of it is totally incorrect.

12. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See : Binod Bihari Singh Vs. Union of India,].

13. Whether the High Court properly exercised its discretion? The High Court in its order having noticed the relevant fact in categorical terms held that there was no substance in the plea that it was unaware about the judgment and award passed by the Reference Court since it was a party before the Reference Court and contested the matter. The High Court also found that the decision of the Joint Secretary to acquiesce was communicated to the beneficiary of the acquisition and therefore, its plea about the unawareness of the award and decision taken by the Government cannot be accepted. The High Court in its order emphatically rejected the ground raised by the respondent in that regard. In such view of the matter can it be said that the High Court properly exercised its jurisdiction?

14. It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its

application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

32. For the aforesaid reasons, we hold that the High Court gravely erred and exercised its discretion to condone the inordinate delay of 1724 days though no sufficient cause has been shown by the applicants. It is for that reason, we interfere with the decision of the High Court and set aside the same. The appeals are accordingly allowed without any orders as to costs.

45. The question that arises for consideration of this court in this application is whether applicant have made out sufficient cause for setting aside abatement of arbitration petition and whether such application was made without any negligence, inaction and does not lack of bonafides on the part of the applicant. Question also arises for consideration of this court as to whether applicant had taken all possible steps within its power and control and had approached this court without any unnecessary delay.

46. On perusal of the record produced by both parties in the present proceedings, it is clear that when petitioner no. 1 expired on 30th December, 1997, petitioner nos. 2 to 5 were alive. Each of the petitioner was signatory to the petition individually. On 23rd January, 1998, the original petitioner no. 3 had filed affidavit in Chamber Summons No. 98 of 1998 in Suit No. 1562 of 1978 in this court. On 12th January, 2002, the original petitioner no. 3 expired. The applicant No. 15 who has signed affidavit in support of this Chamber Summons and who is son of the original petitioner no. 3 had taken out chamber summons bearing No. 780 of 2003 in Suit No. 1562 of 1978 for bringing the legal heirs on record in this court when petitioner nos. 1 and 3 died. The petitioner nos. 2, 4 and 5 were alive. Petitioner nos. 4 and 5 are alive even today. No affidavit in support of the Chamber Summons has been filed by the petitioner nos. 4 and 5 explaining as to why they did not take out any proceedings for setting aside abatement. It is not in dispute that original petitioner nos. 1 to 4 were brothers and original petitioner no. 5 was cousin of petitioner nos. 1 to 4. Petitioner nos. 2, 4 and 5 were obviously aware of the death of petitioner nos. 1 and 3 but did not take out any proceedings for bringing the legal heirs petitioner nos. 1 and 3 on record. Perusal of the record indicates that there is no explanation for the delay between 10th December, 1997 and 12th January, 2002 in the affidavit in support filed by the applicants. In my view, the respondents are right in their submission that if the applicant have taken out proceedings for bringing the legal heirs of the petitioner no. 3 on record by taking out Chamber Summons in the other proceedings in the same court, they were fully aware of the legal proceedings and their rights and obligations to adopt proceedings for bringing the legal heirs on record. Perusal of the record also indicates that applicant no. 15 who is the son of the original petitioner no. 3 had taken out chamber

summons bearing No. 780 of 2003 in Suit No. 1562 of 1978 for bringing the legal heirs on record.

47. In the affidavit dated 27th June, 2003 filed by the applicant no. 15, it was stated on oath that he was only one of the heirs of the late original plaintiff no. 4 who was at all apprised of the facts of the case and able to attend to the matter. It is not in dispute that applicant no. 15 had executed memorandum of understanding on 24th September, 2004, between him and Sunil Mantri HUF in respect of some of the properties including the properties which were subject matter of the arbitration petition. Perusal of 9th and 10th recital and clauses 9, 16, 17, 20 of the said MOU indicates that applicant no. 15 was fully aware of the arbitration petition filed in this court by his father and others. There was reference to the said proceedings in the said MOU in various paragraphs. In clause 20 of the said MOU, it was categorically recorded that by expressly relying upon the correctness of the covenants, assurances and declarations of the owners, the developers had agreed to enter into the said Memorandum of Understanding with the owners. It is also recorded that the said statements and declarations formed the basis of the said MOU. The applicant suppressed the said MOU in the affidavit in support. Respondent had brought the said MOU on record by filing affidavit. In affidavit in rejoinder of applicant no. 15, the explanation sought to be given by the applicant no. 15 is that he had not given any instructions to prepare such Memorandum of Understanding nor was he aware of the contents thereof including reference to the arbitration petition no. 66 of 1991 made therein and all such instructions were given by solicitor of Sunil Mantri HUF is not convincing. The applicant no. 15 has not denied the execution of such MOU nor has signed thereof. Perusal of the record also indicates that on two occasions original petitioner no. 3 during his lifetime had attended this court for filing affidavit in Suit NO. 1562 of 1978.

48. Considering the record produced by both parties, I am of the view that it is not possible to accept the contention of the applicant that the applicants were not at all aware of the pending proceedings in this court (Arbitration Petition No. 66 of 1991). In my view when petitioner no. 1 died, other petitioners were alive. Original petitioner no. 3 ought to have adopted appropriate proceedings for bringing legal heirs of the original petitioner no. 1 on record. On the death of petitioner no. 3, his legal heirs have taken out chamber summons in other proceedings for bringing them on record but did not take out similar proceedings in this matter. Perusal of the MOU indicates that applicants were fully aware of the present proceedings. Deponent of applicant no. 15 is electronic engineer and therefore I am not inclined to accept his contention that he did not give any instruction to prepare the MOU between him and Sunil Mantri HUF or that he did not read the said MOU and/or was not aware of the contents thereof. Supreme Court in case of *Grasim Industries* (supra) has held that when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signature thereon, otherwise no signature on a document can ever be

accepted. It is further held that in particular, businessmen, being careful people since their money is involved would have ordinarily read and understood a document before signing it. Hence, the presumption would be even stronger in their case. It is not in dispute that MOU was signed by the applicant no. 15 in favour of Sunil Mantri HUF in which MOU there was a reference to arbitration petition No. 66 of 1991 and applicant no. 15 had given assurance of his clear title in respect of the said properties.

49. In my view, if such explanation is accepted, there would be no sanctity of the signature of a party on any document.

50. I am not inclined to accept the submission made by Mr. Thakkar, the learned senior counsel that unless all the relevant documents pertaining to various properties which were subject matter of the arbitration petition were made available to the applicants and were not personally scrutinized and unless rights of each and every applicant and other petitioners individually were ascertained, it was not possible for the applicant to file chamber summons for bringing legal heirs on record or for setting aside the abatement of the petition. In my view, the reliance placed by the applicants on the number of files and documents in the affidavit in support of the chamber summons for the purpose of explaining the delay in taking out chamber summons is totally misplaced and does not appear to be bonafide. The letter addressed by the Ex- advocates of the applicants which is placed on record by the applicants also indicate that the applicants had all the relevant documents pertaining to the properties which were handed over by the applicants to their ex-advocates. The plea raised by the applicants in the affidavit in support and affidavit in rejoinder indicates inconsistencies and contradictions about the date of knowledge of the applicants about the pendency of the arbitration petition in this court. The applicants have also not produced any proof on the record of this proceedings pointing out any illness of any of the petitioners as alleged in the affidavit in support. In my view, as some of the applicants had taken out chamber summons in the year 2002 itself in Suit No. 1562 of 1978, for bringing heirs and legal representatives of the original petitioner no. 3 and in view of the applicants having knowledge of the arbitration petition pending in this court, the applicants could have adopted appropriate proceedings for bringing legal heirs of the petitioner nos. 1 and 3 in this proceedings also. It is not in dispute that the petitioner nos. 4 and 5 though are alive, no such proceedings were take out by them for bringing legal heirs of the petitioner nos. 1 and 3 on record and even did not file any affidavit in support of the chamber summons explaining their alleged lack of knowledge about the proceedings.

51. In view of the order passed by the Division Bench in the appeals filed by the legal heirs of the petitioner nos. 1 and 3 and by petitioner nos. 4 and 5, it is not necessary for this court to go into the issue whether the entire petition had abated or it was only abated in respect of petitioner nos. 1 to 3. It is therefore, not necessary to deal with judgments relied upon by Mr. Thakkar the learned counsel on this issue.

52. As far as submission of Mr. Thakkar that this court should not proceed with the tendency of finding out fault with the cause shown and to reject chamber summons by slip short orders and the court should give liberal consideration to expression "sufficient cause" to ensure that substantial justice is done is concerned, in my view the court also has to see whether valuable right has accrued in favour of the party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, it would be unreasonable to take away that right on mere asking of the applicant. In my view the court also has to examine whether any delay on the part of the applicant was as a result of negligence, default or inaction of that party. The court also has to examine whether the application for setting aside abatement or for condonation of delay was bona fide and based upon true and plausible explanation. The court has to see that the justice must be done to both the parties equally.

53. The Supreme Court in the case of Balwant Singh (supra) after adverting to earlier judgment of the Supreme Court in the case of Mithailal D. Singh reported in (2000) 9 S.C.C. 94 held that if the party has been thoroughly negligent in implementing its right it would be equally unfair to deprive the other party of valuable right that is accrued to it in law as a result of his acting vigilantly. The Supreme Court has also held that if the application is bona fide and based upon true and plausible explanation as well as effects of normal behaviour of the common prudent person on the part of the applicant the court would normally tilt judicial discretion in favour of such applicant. Liberal construction cannot be equated with doing injustice to the other party.

54. Perusal of the record however, indicates that the applicants were fully aware of the arbitration petition pending in this court and had taken out proceedings for bringing legal heirs of the petitioner no. 3 on record in the other suit. The applicant No. 15 had also signed the memorandum of understanding in which there was reference to the arbitration petition. The applicants were thus fully aware of the pending proceedings in respect of all the deceased petitioners. Record also indicates that applicants were also aware of the death of respondent no. 2 and did not take steps to bring his legal heirs on record within time prescribed by law. It is not in dispute that this court has already passed decree in favour of the respondents on abatement of the arbitration petition. The effect of such decree is subject to the outcome of this chamber summons. The fact however remains that due to gross negligence on the part of the applicants in not filing appropriate proceedings for bringing legal heirs of the deceased petitioners and respondent no. 2, the valuable rights has accrued in favour of the respondents. In my view, the explanation given by the applicant in affidavit in support does not appear to be true and plausible and does not reflect normal behaviour of the common prudent person. The facts brought on record by the respondents indicate the delay which is directly as a result of the negligence, default or inaction on the part of the applicants. In my view though the court has to take liberal view, while considering the application for condonation of delay or

for setting aside the order of abatement, however, at the same time the court also has to examine whether by exercising discretionary powers in favour of such party, who was negligent, not prompt and because of his default or inaction, the other side also should not suffer. In my view, the application filed by the applicants lacks bona fide and does not contain true and correct facts. In my view, the applicants have failed in showing sufficient cause for condonation of delay as prayed in filing the application in question and for setting aside abatement.

55. As far as judgments in the case of Sital Prasad (*supra*) relied upon by the applicant is concerned, the applicants before the Supreme Court were staying in rural areas and the seat of the High Court was far way from the area where the applicants were residing. In that context, the Supreme Court observed that the legal heirs were not expected to keep constant watch on the continued existence of the parties to the appeal before the High Court which has seat far away from where the parties in rural areas may be residing. In this case, all the parties have been residing at Mumbai and the arbitration proceedings were pending in this court. In my view, the judgment of the Supreme Court in the case of Sital Prasad thus is of no assistance to the applicants.

56. As far as judgment of the Supreme Court in the case of Ramnath Sahu (*supra*) relied upon by the applicant is concerned, the Supreme Court has held that sufficient cause should receive a liberal construction so as to ensure that the substantial justice is done. It has been also held that it should be done so long as negligence or lack of bona fide cannot be imputed to the party concerned. The court has to see whether sufficient cause has been furnished on the facts of the particular case and straitjacket formula is not possible. The Supreme Court has also held in the said judgment that while considering the matter, the court should not loss sight of the fact that by not taking steps within time prescribed, valuable right has accrued to the other party, which should not be lightly defeated by condoning the delay in routine like manner. The Supreme Court has also held that while considering the matter, the court has to strike balance between resultant effect of the order it is going to pass upon the parties either way. So far as judgment of the Supreme Court in the case of Collector of Land Acquisition, Anantnag is concerned, the application of the Collector for condonation of delay of 4 days was rejected by the High Court. Considering the fact of that case, the Supreme Court took a view that the State which represents the collective cause of the community, does not deserve a litigant non grata status. In the facts of that case, the Supreme Court laid down principles to be followed by the court while considering application for condonation of delay. In my view the facts of the said judgment are totally different and distinguishable with the facts of this case. In my view, as the record indicates that the applicants have not come to this court with clean hand and have suppressed true and correct facts, this court shall not exercise its discretionary power and shall not take any lenient view in this matter.

57. In my view, no case is made out by the applicants for setting aside abatement order passed by this court. Chamber summons is therefore, dismissed. Order of abatement of the petition is restored.

58. In view of the dismissal of the Chamber Summons and in view of the dismissal of the Arbitration Petition, it is clarified that the decree already passed by this Court would stand revived. There shall be no order as to costs. The learned counsel appearing for the applicant at this stage applies for stay of the operation of this order. Petitioners are directed not to execute the decree for the period of four weeks from today.