

(2014) 06 TP CK 0047

In the Tripura High Court

Case No : CM Appl. No. 587 of 2013 in LA App. No. 98 of 2013

The LA Collector Vs Subhash Chandra Das

Date of Decision : 18-06-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (2014) 06 TP CK 0047

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S. Deb, Sr. Advocate and Mr. B. Datta, Advocate for the Appellant;
D.J. Saha, Advocate for Respondent Nos. 1 to 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Heard learned senior counsel, Mr. S. Deb, assisted by learned counsel, Mr. B. Datta for the appellant-applicant and learned counsel, Mr. D.J. Saha for the respondent-opposite party Nos. 1 to 4. No representation on behalf of respondent O.P. Nos. 5 and 6.

2. This is an application filed u/s 5 of the Limitation Act, 1963, seeking condonation of delay of 5 years 2 months 28 days in filing connected LA App. No. 98 of 2013, challenging judgment and award, dated 31.07.2008 passed by learned LA Judge, Belona, South Tripura, in Case No. L.A. 1 of 2008 on a reference made u/s 18 of the L.A. Act.

3. It is contended by the appellant-applicant, LA Collector that land measuring 4.16 acres under Sub-Division-Belonia, South Tripura District was acquired for construction of Indo-Bangladesh Border Fencing on the requisition of National Project Construction Corporation Ltd., a Government of India Enterprise, by a Notification dated 16.02.2006 and the appellant-applicant, i.e. LA Collector determined compensation for the acquired land classifying it in different categories. The land holders received the compensation under protest and, so, a reference u/s 18 of the LA Act was made to the learned LA Judge, Belonia and the learned LA Judge by impugned judgment, dated 31.07.2008 enhanced the

compensation which is challenged in the connected appeal.

It is alleged by the appellant-applicant that learned LA Judge passed the judgment and award without issuing any notice to the requiring department and also without considering the evidence on record. It is also contended that after the judgment was passed, LA Collector (applicant) made a reference to the requiring Department (Opposite Party Nos. 5 and 6) for placing fund to satisfy the award but received no response from the requiring Department. In the meantime, the claimant-opposite parties filed an execution petition vide Ex. L.A. No. 03 of 2012 in the Court of learned LA Judge, Belonia and notice was issued to the appellant-applicant on 09.08.2012. Immediately thereafter, another reference was made to the requiring Department by the LA Collector (applicant) and the requiring Department apprised the LA Collector that they preferred an appeal against the award. It is stated that requiring Department (OP Nos. 5 and 6) preferred LA Appeal No. 21 of 2013, challenging the judgment and award passed in LA No. 01 of 2008 but that LA appeal was dismissed as withdrawn. In the meantime, the claimant-opposite parties insisted the execution case before the trial Judge and the applicant-LA Collector was called upon to satisfy the award. The matter was, thereafter, discussed in threadbare and it was decided to prefer an appeal. On 30.09.2013, the matter was placed before the learned counsel, Mr. Bidyut Datta and he opined that if the award is not challenged the execution petition cannot be challenged in the trial Court and, hence, he advised for filing of an appeal. Advice of learned senior counsel, Mr. S. Deb was also taken and, thereafter, the appeal was filed and, in the meantime, there was a delay of five years two months twenty eight days. It is stated that the application has been made bona fide and the delay may be condoned for fair ends of justice.

4. Opposite party Nos. 1 to 4 submitted a written objection, inter alia, stating that the application seeking condonation of delay suffers from serious delay and laches. No particular date was furnished by the appellant-applicant as to when the references were made by the appellant-applicant to the requiring Department. There is no averment in the application that the appellant-applicant was aggrieved by the judgment and award passed by the learned LA Judge and it is apparent from the statement of the applicant itself that the appeal has been preferred only to resist the execution case. The petition suffers from lack of bona fides, gross negligence and deliberate inaction, and therefore, the delay cannot be condoned.

5. The word "limitation" in its legal and popular sense, refers to the time within which an action may be brought, or some act done, to preserve a right. In its ordinary sense, it means restriction or circumspection. Time is the essence of life. By lapse of time, one acquires a right and at the same time, a right extinguishes due to lapse of time. One is expected to do a particular act or thing in time either fixed by law or by nature. Where the law has prescribed a time limit to take certain action within a certain specified period of time, it has to be taken, by a party desirous to take action, within such specified period, failing

which the party will lose his right to take action subject to any exception prescribed by the statute. The utility of a statute of limitation has never been a matter of doubt or dispute. It has been said that the statute of limitation is a statute of repose, peace and justice. It is one of repose because it extinguishes stale demands, and quiets title. In the words of John Voet, controversies are restricted to a fixed period of time lest they should become immortal while men are mortal. It secures peace as it ensures security of rights; and it secures justice, as by lapse of time evidence in support of rights may be destroyed. There can thus be no doubt that it rests on sound public policy. The operation of the law of prescription has been explained by Lord Plunket in a striking metaphor. He stated that Time holds in one hand a scythe and in the other, an hour glass. The scythe mows down the evidence of our rights, while the hour glass measures the period which renders that evidence superficial. Commenting on this, a learned author observes that the metaphor could have been completed by adding, so far as India is concerned, that a framework of the hour-glass, would certainly decay, the glass to be broken, and send escape.

The Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, has held--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. 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 is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (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 meant 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.

6. By filing the present application, the appellant-applicant, i.e. the LA Collector, sought for condonation of an abnormal delay of five years two months twenty eight days. The reason assigned for the delay is that after the judgment was passed, the LA Collector made reference to the requiring Department for placing fund but received no response. Thereafter, when LA Collector received notice in connection with the execution case, again another reference was made, and at that time the requiring Department informed the LA Collector that they have preferred LA App. No. 21 of 2013. Thereafter, the LA Appeal was withdrawn and since the execution proceeding was on progress and the applicant-LA Collector was asked to satisfy the award, the applicant decided to prefer the appeal and, hence, after a delay of five years two months twenty eight days the appeal has been preferred. Nothing stated as to when the appellant-applicant first came to know about the judgment and award, when the certified copy of the judgment and award was collected, when the reference was made to the requiring

Department, when response was received from the requiring Department that they have preferred the appeal, etc. It is quite apparent from the averments made by the appellant-applicant that at the first instance when LA Collector got the judgment and award, he did not feel aggrieved and, therefore, he asked the requiring Department to place fund to satisfy the award. Had he felt aggrieved by the judgment and award passed by the learned LA Judge at the first instance, he would take initiative for preferring appeal. When he received the notice of the execution case, he reacted and again made a reference to the requiring Department and the requiring Department informed him about the appeal filed by them, and at that time also the present applicant, LA Collector did not feel any necessity to prefer an appeal, independent of the appeal filed by the requiring Department. When the appeal filed by the requiring Department was withdrawn and the trial Court in execution of the award asked the applicant-LA Collector to satisfy the award, the LA Collector felt it necessary to prefer the present appeal with the special petition for condonation of delay. It is nothing but gross negligence and deliberate inaction on the part of the applicant-LA Collector and it lacks bona fides on the part of the applicant in taking steps for preferring the appeal in time.

7. Learned senior counsel, Mr. Deb has submitted that the reason what is assigned by the applicant is genuine and bona fide. According to Mr. Deb, learned senior counsel, there is no other reason for the applicant to assign seeking condonation of delay. Since it is the discretion to be exercised by the Court, it may be exercised fairly to condone the delay as otherwise, the applicant shall suffer irreparable loss.

8. Learned counsel, Mr. Saha, on the contrary has submitted that discretion should be exercised equitably for justice and the discretion cannot be exercised in favour of one party to the detriment of the other.

9. The Supreme Court in the case of Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, has observed:-

The discretion to condone the delay like other judicial discretions must be exercised with vigilance and circumspection according to justice, common sense, and sound judgment. The discretion is to know through law what is just. The words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the application."

10. In the case of Shakuntala Devi Jain Vs. Kuntal Kumari and Others, the Supreme Court has held--Section 5 gives the Courts 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.

11. In the present case, the petitioner practically assigned no cogent reason for the delay in presenting the Memorandum of Appeal. A bare reading of the petition clearly represents the casual approach all along made by the appellant-applicant. If the appellant-applicant felt aggrieved with the judgment and award and was serious to prefer an appeal, he would at once take up the issue with the appropriate authority for preferring appeal. No date was mentioned as to when the applicant first got the information about the impugned judgment and award. The reason assigned for the delay appears to be superficial and mechanical having no root at all, and, therefore, discretion of the Court cannot be exercised unilaterally in favour of the appellant-applicant.

12. Learned senior counsel, Mr. Deb with much of emphasis has submitted that the words, "sufficient cause" should be liberally construed so as to ensure the ends of justice. It should not be narrowly construed to reject a meritorious appeal. The appellant-applicant bona fide assigned the reasons for the delay in filing the appeal. The appeal was preferred when the requiring Department had withdrawn their appeal and did not file it thereafter. It is contended by learned senior counsel, Mr. Deb that the requiring Department was a necessary party in the reference made to the learned LA Judge but no notice was issued to the requiring Department and the reference was decided in the absence of the requiring Department which is a serious question to be decided in the appeal and if the delay is not condoned, the appellant-applicant will be deprived in agitating a serious point of law raised in the appeal.

In support of his contention learned counsel has referred the following case laws:

- (i) N. Balakrishnan Vs. M. Krishnamurthy,
- (ii) State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others,
- (iii) State of Haryana Vs. Chandra Mani and others,

13. Learned counsel, Mr. Saha countering the submission of learned senior counsel, Mr. Deb has submitted that no reason at all assigned by the appellant-applicant for the delay in preferring the appeal. There was no cause at all for the appellant-applicant in preferring the appeal far away from "sufficient cause". Burden lies on the appellant-applicant to satisfy the Court that the applicant was prevented by "sufficient cause" in not preferring the appeal in time. The appellant-applicant would not prefer the appeal had the requiring Department insisted their appeal and had no execution petition was filed by the claimant-opposite parties to realize the awarded amount. It shows lack of bona fide on the part of the appellant-applicant. According to Mr. Saha it was a sheer negligence and inaction on the part of the appellant-applicant in preferring the appeal in time and so the delay should not be condoned.

In support of his contention he has referred the following case laws:

- (i) Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another,

- (ii) Basawaraj and Others Vs. The Spl. Land Acquisition Officer,
- (iii) Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others,
- (iv) Union of India (UOI) and Others Vs. Vidarbhabenaer Industries,
- (v) P.K. Ramachandran Vs. State of Kerala and Another,
- (vi) Amlendu Kumar Bera and Others Vs. The State of West Bengal,
- (vii) Balwant Singh (Dead) Vs. Jagdish Singh and Others,
- (viii) Commissioner Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara and Another,
- (viii) J. Kumaradasan Nair and Another Vs. IRIC Sohan and Others,

Both side have also referred the decision of the apex Court in the case of State of Rajasthan and Another Vs. Bal Kishan Mathur (D) through L.Rs. and Others,

14. The appellant-applicant contended that the requiring Department, i.e. OP Nos. 5 and 6 preferred LA Appeal No. 21 of 2013 but that has been dismissed as withdrawn. Learned counsel of the opposite parties placed on record a copy of order dated 12.08.2013 passed in LA App. No. 21 of 2013 which shows that learned Asstt. Solicitor General appearing for the appellants prayed for withdrawing the appeal with a liberty to file afresh after removing the defects in the appeal and the prayer was allowed subject to payment of a cost of Rs. 2,000/- to the learned counsel of the respondents. Both side remained silent as to whether a fresh appeal by the requiring Department, i.e. OP Nos. 5 and 6, was filed or not. Be that as it may, it is quite apparent that the present applicant would not prefer the present appeal had the appeal filed by the requiring Department was not withdrawn. It is, therefore, quite clear that at the first instance the applicant did not feel any necessity to prefer an appeal and asked the requiring Department to place fund to satisfy the award. The applicant felt it necessary to prefer an appeal only after the executing Court insisted the applicant to satisfy the award and, thereafter only the applicant consulted the learned counsel and decided to prefer the appeal and that decision was taken after more than five years.

15. "Sufficient cause" is an expression, which is found in various statutes. It has been liberally construed in keeping with its ordinary dictionary meaning as "adequate" or "enough". Any justifiable reason resulting in the appeal has to be understood as "sufficient cause".

15.1. In the case of Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, , the Apex Court has held-

"The expression "sufficient cause" 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. 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. However 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, causing enormous loss and irreparable injury to the party against whom the list terminates and defeating valuable right of such a party to have the decision on merit. While considering the matter the courts should strike balance between the resultant effect of the order it was going to pass upon the parties either way

15.2. In the case of State of Nagaland Vs. Lipok AO and Others, the Supreme Court has observed--The proof by "sufficient cause" is a condition precedent for exercise of the extraordinary discretion vested in the court. The Court has further observed that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Apex Court also took cognizance of the usual bureaucratic delays which takes place in the functioning of the State and its agency/instrumentalities.

15.3. In the case of Balwant Singh(supra), the Supreme Court has held--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. 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. 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.

Even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the

party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. 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 has 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 its acting vigilantly.

15.4. In the case of Basawaraj(supra), the Supreme Court has observed-- Sufficient cause is the cause for which party could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay.

16. Both side relied on the decision of the apex Court in the case of Bal Kishan Mathur(supra). In that reported case two dates were mixed up due to error in mentioning the dates and taking into account the discrepancy between the dates and further taking into account the period of six days between those two dates for which no explanation was given, the prayer for condonation of delay was refused and the Supreme Court found that it was an apparent error on face of record and the error occasioned by inadvertence for which the delay was condoned. In that reported case, the Supreme Court has also taken into account the observations of the apex Court in the case of Amalendu Kumar Bera (supra) and Chief Post Master General v. Living Media India Ltd. (supra). In paras 9 and 10 of the judgment the Court observed thus:

"9. It is correct that condonation of delay cannot be a matter of course; it is also correct that in seeking such condonation the State cannot claim any preferential or special treatment. However, in situation where there has been no gross negligence or deliberate inaction or lack of bona fides this Court has always

taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation. Unless the explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if the delay is inordinate and third party rights had become embedded during the interregnum the Courts should lean in favour of condonation. Our observations in *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, and *Amlendu Kumar Bera and Others Vs. The State of West Bengal*, do not strike any discordant note and have to be understood in the context of facts of the respective cases.

Postmaster General v. Living Media India Ltd. (supra)

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few

Amalendu Kumar Bera v. State of West Bengal (supra)

10.... True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection u/s 47 till the decree-holder puts the decree in execution.... Merely because the respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of "sufficient cause" delay shall not be condoned.

10. In the present case, the High Court seems to have accepted the explanation for the delay upto 02.11.2006. Thereafter, taking into account the statement made in the condonation application that the appeal has been filed on 02.11.2006, whereas it was actually filed on 08.11.2006, the High Court refused to condone the delay of the period between the two dates i.e. six days. Reading

the relevant paragraph of the condonation application it is obvious to us that there is an apparent error or mix up in the dates furnished by the State in its application for condonation of delay. The mention of the date 2.11.2006 in para 5 of the condonation application is by hand. Obviously it is an error occasioned by inadvertence. The date that should have been mentioned is 8.11.2006 and not 2.11.2006. The inadvertence or even if the above act is construed to be negligent, in our considered view, cannot be sufficient to justify a refusal of the adjudication of the appeal filed by the State on merits which is the ultimate consequence of the impugned order. Taking into account the totality of the facts of the case, particularly the period of the delay, we are of the view that in the present case, the High Court should have condoned the delay. The same not having been done we deem it appropriate to allow the appeal and set aside the order dated 12.11.2008 passed by the Division Bench of the High Court; condone the delay that had occurred in filing of D.B. Special Appeal Writ No. 02033 of 2007 and remit the matter back to the High Court for disposal on merits. We make it clear that we have not expressed any opinion on the merits of the case of the parties before us

The ratio laid down by the apex Court in this case in no way supports the case of the appellant-applicant for condoning the delay of more than five years where no reason assigned to the satisfaction of the Court for exercising its discretion.

17. Culling out the binding precedence, the Supreme Court in the case of Esha Bhattacharjee (supra) has laid down the following principles for the approach and to be adopted by the Courts while dealing with application for condonation of delay-

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the Courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

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

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

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non challan manner requires to be curbed, of course, within legal parameters.

18. In the case of Chandra Mani(supra) the Supreme Court has observed-- Section 5 of the limitation Act gives power to the court to admit the appeal or application after the prescribed period. The Supreme Court generally adopts a liberal approach in condonation of delay finding somewhat sufficient cause to

decide the appeal on merits. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State respondents collective cause of the community. Decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay--intentional or otherwise--is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. Litigants including the State are accorded the same treatment and the law is administered in an even-handed manner.

19. The ratio laid down by the apex Court in the cases of Esha Bhattacharjee(supra) and Chandra Mani(supra) in no manner support the case of the appellant-applicant. It is not a case that the appellant-applicant was prevented by any reason behind the delay. From the inception the appellant-applicant was not at all inclined to prefer appeal, rather he asked the requiring Department to deposit the fund to satisfy the award. He came out to prefer the appeal when execution petition was filed and he was asked to satisfy the award. It is a natural consequence that judgment debtor will be asked to satisfy the judgment/award. It cannot be comprehended that a person aggrieved by a judgment would be waiting to make a choice whether appeal will be filed or not till an execution petition is filed or some other party to the lis prefers an appeal. The appellant-applicant, in my considered opinion, was grossly negligent for inaction on his part and was suffering from lack of bona fides and the reason for the delay assigned in the petition cannot be said to be a cogent reason or "sufficient reason" in filing the appeal in time. The above decisions of the apex Court can in no way go to the aid of appellant-applicant.

In the case of N. Balakrishnan(supra) also the Supreme Court has set out the same principle and I find no reason to further discuss that decision in the given facts and circumstances of this case.

20. Learned senior counsel, Mr. Deb has argued that a serious question of law

has been raised in the appeal since the requiring Department was not noticed by the learned LA Judge in the reference case and, hence, the appeal should be admitted for a decision and the delay should be condoned. Learned senior counsel has relied on the decision of Y. Moideen Kunhi(supra) in support of his contention.

In that reported case, delay of more than 6,500 days was condoned subject to payment of an exemplary cost of Rs. 10.00 lakhs since public interest was grossly involved in the matter.

Learned senior counsel, Mr. Deb contended that the ratio of that decision should be applied in this case also since the requiring Department was not noticed by the learned LA Judge while deciding the reference.

Countering the submission of learned counsel, Mr. Deb, learned counsel, Mr. Saha referring the case of Commissioner, Nagar Parishad, Bhilwara(supra) has submitted that while deciding a condonation matter merit of the case should not be considered and that a condonation matter should be decided on the basis of the materials placed on record regarding the delay alone and nothing else.

In Y. Moideen Kunhi (supra) the Supreme Court considered the importance of question of law involving public interest and considered the condonation of delay of more than 6,500 days in the given facts and circumstances of the case. In Commissioner, Nagar Parishad, Bhilwara (supra), the apex Court considered the fact that while considering delay the High Court considered the merit of the appeal and rejected the petition for condonation of delay and the apex Court held that the High Court was not proper in considering the merit of the appeal while rejecting the application of condonation of delay.

21. I cannot agree with the submission of learned counsel, Mr. Saha that while considering the application for condonation of delay the Court cannot look into the merit of the case. The Court can obviously look into the merit of the case but should not decide the condonation petition taking into account the merit of the case alone while deciding the condonation matter.

22. In the present case, the appellant-applicant has raised a point of law that the requiring Department was not noticed in the reference decided by the learned LA Judge. According to the appellant-applicant, after the judgment and award was passed by the learned LA Judge the appellant-applicant made reference twice to the requiring Department and it is on record that the requiring Department, i.e. OP Nos. 5 and 6 preferred an appeal challenging the judgment and award and that appeal has been withdrawn seeking liberty to file afresh. So, while the requiring Department themselves have taken up the issue filing appeal, and subsequently, withdrawing the same the applicant has nothing now to agitate on behalf of the requiring Department that the requiring Department was not noticed in the reference case and, therefore, I find nothing to apply the ratio of the decision in Y. Moideen Kunhi (supra).

23. It is a settled law that number of days is immaterial. What is material is the reason behind the delay. If "sufficient cause" is assigned to the satisfaction of the Court to apply its discretion, delay of any number of days may be condoned where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation. There is also no legal requirement for explaining the delay on day to day basis. If reason for the delay is explained with a strong foundation behind it, condonation may be allowed for any amount of delay. It is only necessary to explain it to the satisfaction of the Court with bona fide reasons.

24. In the present case, I am of the considered opinion that the appellant-applicant has failed to assign "sufficient reason" for the delay and, hence, the application for condonation of delay stands rejected.