

---

**(2007) 07 AHC CK 0123**  
**In the Allahabad High Court**  
**Case No : Second Appeal No.259 of 2006**

|                             |    |            |
|-----------------------------|----|------------|
| Trust Eye Hospital, Sitapur | Vs | APPELLANT  |
| Haseena Begum and Others    |    | RESPONDENT |

---

**Date of Decision :** 10-07-2007

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2007) 07 AHC CK 0123

**Hon'ble Judges :** Poonam Srivastava, J

**Final Decision :** Dismissed

---

## Judgement

Mrs. Poonam Srivastava, J.—Heard Sri Avadhesh Kumar, Advocate, for the appellant and Sri S.P. Shukla, Advocate for the respondent No.3 Mohd. Salim, Sri R.K. Sharma, Advocate, behalf of the respondent No.18, who was impleaded subsequently. Vakalatnama filed on behalf of the respondent No.3 by Sri Akhilesh Kalra, Advocate, today is taken on record.

2. The instant appeal was reported to be beyond time by 10 years 9 months and 1 day. On 21.7.2006, when the instant appeal was presented, an application for interim relief came up before this Court and the application was allowed. The respondent Nos. 17 and 18 were restrained from raising any construction over the land of Sitapur Eye Hospital Trust.

3. Counsel for the respondents filed an application to vacate the interim order as well as reply to the application filed under Section 5 of Indian Limitation Act. The application for condonation of delay in filing the appeal is listed for order before me today. I have gone through the application as well as affidavit and the ground taken for not filing the appeal within the time is detailed in paragraph Nos. 2 and 3 of delay condonation application, which reads as under:

?That the appellant could not file the above noted second appeal due to wrong legal advice.

That now on legal advise, it has been guided to file the present second appeal

just to avoid any legal complications in future.?

4. Counter affidavit filed on behalf of the respondents has disputed and denied the ground for condonation of delay as vague, misconceived and misleading. It has also been brought to my notice that the instant appeal has been filed against dead persons namely respondent Nos.13, 14 and 16.

5. After hearing counsel for the respective parties, it is apparent that only explanation given for delay is "wrong legal advice". Counsel for the appellant has filed rejoinder affidavit today, which is taken on record. It has been reiterated in paragraph No.7 of the rejoinder affidavit that the appeal could not be filed earlier as no such legal advice was given to the appellant. In paragraph No.9 of the rejoinder affidavit, it is stated that certified copies of the two judgments were obtained. Second appeal was not filed for want of legal advice.

6. Learned counsel for the appellant states that a substitution application for setting aside the abatement application will be brought on record with an application for condonation of delay later and this was not done earlier for want of legal advice. In view of submission of the counsel for the appellant, it is apparent that the appellant has all along taken shelter behind the excuse of wrong legal advice for every lapse committed by him, though the appellant is a Trust namely Sitapur Eye Hospital.

7. Learned counsel for the appellant has placed a number of decisions in support of application for condonation of delay, *State of U.P. and Another v. Malik Zarid Khalid*, 1985 (3) LCD 112. In this case, delay was condoned in filing of the revision on account of wrong advice.

8. I have gone through the said judgment. In fact, it is a case where a writ petition was filed instead of revision on wrong legal advice and on the relevant date, when the writ petition was preferred, the period of limitation provided for revision was not expired, the writ petition was rejected as not maintainable on the ground of alternative remedy. Revision was preferred which was beyond time by four days. The Court condoned the delay and treated the revision to be within time. The next decision cited in support of the appellant is of the Apex Court in the case of *Mata Din v. A. Narayanan*, AIR 1970 SC 1953. This is again a case where there was delay in filing the appeal due to the reason that the appellant was pursuing remedy in a wrong forum on mistaken legal advice of the counsel and, therefore, the Apex Court was of the view that it is no fault of the litigant and the delay was condoned. Third case relied upon by the counsel for the appellant is *Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and Others*, 1987 LCD 309. This decision has been cited in support of the contention that while considering an application for condonation of delay, the approach should be liberal and litigant should not be made to suffer only on account of technical reason. Counsel for the appellant has placed reliance on another decision of this Court *Phool Chand and another v. Dy. Director of Consolidation, Azamgarh and Others*, 2004 (22) LCD 474. This decision is again on the question

that the Court while deciding an application for condonation of delay, 'sufficient cause' should receive a liberal approach and mistake on the part of the counsel must be held to be sufficient cause. Counsel for the appellant has also cited decisions of this Court; *State of U.P. and Others v. Ram Kishun and Others*, 2007 All. C.J. 327, as well as *N. Balakrishnan v. M. Krishnamurthy*, 1998 RD 607. Last citation is of the Apex Court which ruled that condonation of delay is a matter of discretion of the Court which can be exercised only if the delay is within certain limits. Only criterion is acceptability of explanation, once explanation is accepted, the result is, positive exercise of discretion, it should not be disturbed by the superior Court in the normal circumstance. In view of all these decisions, I am in agreement with the contention of the counsel for the appellant to the extent that the Court should adopt a liberal view while considering the application for condonation of delay.

9. However, in the instant case, explanation for condonation of delay is apparently half hearted explanation. A bare reading of the application and the affidavit, it transpires that the instant Second Appeal could not be filed for want of legal advice. It is not a case where the appellant was pursuing another remedy on account of wrong legal advice or where the appellant was vigilant enough to safeguard his interest. In the instant case, there is concurrent findings of the two Courts against the appellant and thereafter no explanation as to why the appellant was sitting tight over the matter without any attempt for redressal of his grievance. No other forum was approached by the appellant and it was only after 11 years he woke up to prefer the instant Second Appeal. It is not even asserted by the appellant that on what date he was given a wrong legal advice and when he was apprised regarding his right to approach this Court for filing the instant Second Appeal. No details has been given whatsoever, and therefore, I am of the considered view that the appellant was sleeping over his right and this appeal has been preferred only with a view to cause harassment to the respondents. The appellant was not even interested in submitting a proper explanation in the affidavit along with an application for condonation of delay. Specially, in the instant case, there is no material whatsoever. An application for condonation of delay is not a matter of right. There must be some specific ground or reasons why he was prevented to approach the Court earlier. The alleged cogent reason given by him for not approaching the Court within time is that he was not advised to do so. The conduct of the party has to be taken into consideration before an application for condonation of delay is allowed. Valuable right accrues to the contesting party in whose favour judgment is given and, therefore, it has continuously been ruled that prerequisite of satisfactory or reasonable explanation for condoning the delay must be on record and satisfy the judicial conscience that the litigant was prevented for certain reason beyond his control and he could not approach the Court within time.

10. Learned counsel for the respondents has placed reliance on a number of decisions namely *State of U.P. through Special Land Acquisition Officer, Jaunpur, v. Khalil son of Mohd. Kaleem*, 1996 SCD 525, *P.K. Ram Chandran v. State of*

Kerala and another, 1998 (89) RD 18 and Vijai Kumar and Others v. State of U.P. and Another, 1991 SCD 656. In the instant case, there is no ground for condoning the delay for almost 11 years without there being a proper explanation for such a long period. Assuming the statement of counsel for the appellant that explanation of each and every day does not mean that the explanation should be given date wise, delay of such a long period was liable to be explained if not month to month, at least year to year in his delay condonation application, a specific assertion is required to be made that despite due diligence the appellant was prevented from approaching this Court for the period of eleven years.

11. I have perused the entire record, application under Section 5 of the Indian Limitation Act, and counter and rejoinder affidavits, I am not satisfied that sufficient cause has been shown by the appellant for condonation of delay of such a long period in filing the instant Second Appeal. However, liberal approach be given for accepting an explanation for making out a 'sufficient cause', since no explanation is given there is no option but to reject the application for condoning the delay.

12. In view of what has been discussed above, the application lacks merit. The Appeal is dismissed on the ground of delay of eleven years. The appeal does not deserve consideration on merit. Admittedly, there is concurrent finding recorded by the two Courts. The appellant was granted benefit of interim order despite there being such a long delay and no order of admission or even a reference regarding substantial question of law. The interim order of this Court is discharged. The appeal is dismissed.

13. The parties shall bear their own costs.

(Appeal dismissed)