

Gujarat High Court

State Of Gujarat vs Lajbarkhan Sherdalkhan Pathan on 12 April, 2023

Bench: Sandeep N. Bhatt

C/SCA/18903/2021

JUDGMENT DATED: 12/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18903 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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STATE OF GUJARAT
Versus
LAJBARKHAN SHERDALKHAN PATHAN

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Appearance:

MR CHINTAN DAVE, AGP for the Petitioner - State - Original Defendant / Applicant

MR DEVEN PARIKH, SENIOR ADVOCATE with
MR RUTUL P DESAI, ADVOCATE for the Respondent - Original Plaintiff / Opponent

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 12/04/2023

ORAL JUDGMENT

1. The present petition is filed by the petitioner -

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 State - original defendant challenging the impugned order dated 30.04.2021 passed below Exh.13 in Civil Misc.

Application No.41 of 2021 by the Principal District and Sessions Judge, Ahmedabad (Rural) at Mirzapur -

Ahmedabad, whereby the appellate Court below has dismissed the application for condonation of delay of 3230 days preferred in filing appeal against the judgment dated 03.05.2012 passed in Regular Civil Suit No.50 of 2012 by the trial Court i.e. 2 nd Additional Senior Civil Judge, Ahmedabad (Rural) at Mirzapur - Ahmedabad, which is in favour of the respondent - original plaintiff.

2. The brief facts of the original plaintiff in the suit leading to this petition are epitomized as under :

2.1 The present respondent - original plaintiff is possessing the land bearing Survey No.341 situated at Mouje : Shahvadi, Tal. City, District Ahmedabad, admeasuring Acre 8 and 22 Guntha before the year 1951 and his name was shown in the revenue record for the period from 1961-62 to 1988-89 as Farmer. In the year 1989, the present petitioner - Government Authority has come at the place and issued notice to the plaintiff for vacating the said land within seven days, without following any procedure, without doing any panchnama and removed some part of the C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 hut. Therefore, the plaintiff has preferred Regular Civil Suit No.705 of 1989 before the competent Civil Court for declaration and permanent injunction, along with an application for injunction. Though served, the defendant -

State Authority had chosen not to appear and contest the said suit. The trial Court has, therefore, allowed the suit ex-

parte and granted permanent injunction vide its judgment dated 20.08.1993 and directed the defendants - Government Authorities not to take possession of the land in question from the plaintiff, without following due process of law. The said judgment dated 20.08.1993 passed by the trial Court in Regular Civil Suit No.705 of 1989 has attained finality, as there was no challenge by the defendant - State Authority against the same before any higher forum till date.

2.2 The land in question is in possession of the original plaintiff.

2.3 After about two decades, in the year 2012, the original plaintiff - present respondent has again filed Regular Civil Suit No.50 of 2012 before the competent Civil Court inter alia praying to declare the owner of the land in question in view of adverse possession since last more than 61 years as well as for permanent injunction. In the said suit also, though served, none appears for the Government C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 authorities and therefore, the trial Court has, vide order dated 23.03.2012, closed the right of the State and directed to hear the suit ex-parte. Ultimately, the trial Court has passed the judgment 03.05.2012 in favour of the original plaintiff and

decreed the suit on 08.05.2012.

2.4 There are various correspondences under the Land Revenue Code between the parties for vacating the land in question in the year 2017 to 2020.

2.5 Finally, the present petitioner - State Authority has preferred an application for condonation of delay being Civil Misc. Application No.41 of 2021 in preferring the appeal against the judgment dated 03.05.2012 and decree dated 08.05.2012 passed by the trial Court in Regular Civil Suit No.50 of 2012 before the appellate Court below. There are 3230 days delay.

2.6 In the said proceedings also, the Government Authority / Government Pleader has not remained present and therefore, the rights of the State were closed at each stage of the proceeding, after giving ample opportunity.

2.7 The appellate Court below has rejected the said Civil Misc. Application No.41 of 2021 for condonation the C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 delay vide impugned order dated 30.04.2021.

2.8 It is this order impugned, which is challenged by the State Authority before this Court in this petition after about 9 years.

3. Heard Mr. Chintan Dave, learned Assistant Government Pleader for the State Authorities - original defendant/applicant and Mr. Deven Parikh, learned senior advocate with Mr. Rutul Desai, learned advocate for the respondent - original plaintiff/opponent at length. Rule.

Learned advocate Mr.Rutul Desai waives service of notice of rule on behalf of the respondent. With consent of both the learned advocates, the matter is heard and decided today.

3.1 Mr. Chintan Dave, learned AGP has drawn my attention towards additional affidavit filed by the petitioner -

State Authority and has submitted that in the year 2012, there was a revenue distribution of territorial jurisdiction of Ahmedabad. It came to be divided into two zones; east zone and west zone. Due to that bifurcation of zones, the necessary requirement of the establishment of the authorities separately for each zone has been arisen. He has further submitted that said bifurcation and relocation of the zones consumed some time and thereafter, the authorities could C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 demarcate and determine the revenue jurisdiction. He has also submitted that therefore, due to that process of establishment of the said offices, the records, documents and all the other connected things were either shifted or were in process of being sifted and that the same took considerable time. He has further submitted that in the year 2017, the Ahmedabad Municipal Corporation has drawn the attention of the State Government regarding illegal encroachment and possession over the land in question that the authorities were made aware regarding the illegal possession of the respondent. He has submitted that on 20.03.2018, the notices were issued to the encroachers under Section 61 of the Bombay Land

Revenue Code and the respondent through his power of attorney filed a reply placing reliance upon the order passed by the trial Court in Regular Civil Suit No.705 of 1989.

3.2 He has submitted that thereafter on 20.08.2018, the Mamlatdar had passed an order directing the encroachers to remove encroachments within a period of seven days. The respondent has challenged the said order passed by the Mamlatdar before the Deputy Collector (East) on 16.10.2018 and during that proceeding, the respondent has placed copy of the judgment and order passed by the trial Court in another suit being Regular Civil Suit No.50 of 2012. He has C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 submitted that with respect to the same prayers as sought in Regular Civil Suit No.705 of 1989, subsequent suit being Regular Civil Suit No.50 of 2012 seeking identical prayers was preferred by the respondent before the trial Court and it is at this stage that it came to the notice of the authorities that the order is passed in Regular Civil Suit No.50 of 2012 dated 03.05.2012. He has further submitted that the suit is filed on 12.05.2001 and the same was decreed on 03.05.2012, which is something required to be noted by this Court. He has submitted that on 26.12.2019, communication was addressed by the authorities to the higher authorities for permission of the legal department through the revenue department. The legal department granted sanction to an appeal against the judgment and decree passed in Regular Civil Suit No.50 of 2012 on 27.11.2020. Soon after receiving the sanction, on 06.03.2012, the petitioner has preferred an application for condonation of delay of 3230 days caused in preferring the appeal before the appellate Court below, which the learned appellate Court below has dismissed.

3.3 He has submitted that looking to the entire chronology of events and the findings recorded by the appellate Court below, it clearly indicates that the appellate Court below has not rightly appreciated the facts and circumstances of the present case as well as the reasons C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 given by the present petitioner in the application for condonation of delay. He has submitted that the delay should be considered liberally as the appellate Court below has taken a hyper-technical view in considering the delay, more particularly, the Court influenced by the length of delay which is about 9 years, which is not in consonance with the settled position of law. He has submitted that the appellate Court below has to consider the cause, more particularly, the sufficient cause is made out from the application and in the facts and circumstances of the case, the petitioner has given satisfactory explanation about the cause for delay occurred in filing the appeal.

3.4 In support of his submissions, he has relied upon the decision of Hon'ble Apex Court in the case of Sridevi Datla versus Union of India reported in (2021) 5 SCC 321, more particularly para 28 thereof. He has submitted that this petition may be allowed and the delay of 3230 days in preferring the appeal against the judgment and decree passed by the trial Court dated 03.05.2012 in Regular Civil Suit No.50 of 2012 may be condoned.

4.1 Per contra, Mr. Deven Parikh, learned senior advocate with Mr. Rutul Desai, learned advocate has submitted by pointing out from the additional affidavit filed C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 by the petitioner - State itself that, assuming for the sake of argument that the State has no knowledge about the judgment and decree passed by the trial Court, though served with the notices of the trial Court regarding the suit from 2012 to 2018, but when the State has come to

the knowledge in the year 2018, as stated by them in this additional affidavit, why they have not preferred an appeal against the said judgment and decree till the year 2021. He has submitted that there is no justification for such inaction on the part of the State Authorities about the cause of delay.

4.2 In support of his submission, he has relied upon the following decisions of the Hon'ble Apex Court :

(i) 2021 SCC Online Sc 1260 - Majji Sannemma alias Sanyasirao versus Reddy Sridevi (Para : 2, 3, 5, 12 to 14, 18 to 20 and 21)

(ii) 2021 SCC Online SC 384 - State of Odiasha versus Sunanda Mahakuda (Para : 3, 4 and 6)

(iii) (2020) 10 SCC 654 - State of Madhya Pradesh versus Bherulal (Para : 2, 3, 5 to 8)

(iv) (2012) 5 SCC 157 - Maniben Devraj Shah versus Municipal Corporation of Brihan Mumbai (Para : 9, 11, 13, 14, 19, 23 to 26 and 29) 4.3 He has submitted that even otherwise also, in the C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 application for condonation of delay in preferring the appeal before the appellate Court below, the Authorities have not disclosed necessary explanation for cause of delay occurred in filling the appeal at such belated stage of about more than 9 years. He has submitted that the appellate Court below has rightly rejected the application of condonation of delay by giving proper and valid reasons. He has submitted that no interference is required by this Court under Article 227 of the Constitution of India. He has submitted that this petition may be dismissed.

5. This Court is conscious about the fact that this Court is dealing with the rejection of an application for condonation of delay of 3230 days in preferring the appeal before the appellate Court below against the judgment and decree passed by the trial Court. This Court is also aware about the scope of interference in the impugned order since the suit is decreed ex-parte by the trial Court as well as the order impugned is passed on the application for condonation of delay in preferring the appeal before the appellate Court below.

6. Having heard learned advocates for the respective parties and having gone through the material on record, the picture which has emerged before this Court is as under :

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 6.1 The petitioner is a State Authority, who is the original defendant in the suit and original applicant in the delay condonation application.

6.2 The land in question is situated in the City of Ahmedabad.

6.3 The present respondent - original plaintiff and opponent in the delay condonation application is possessing the land in question since more than 61 years indisputably.

6.4.1 When the State Authorities have suddenly removed some part of his hut situated at the land in question without following due process of law, he has immediately approached the competent Civil Court by filing Regular Civil Suit No.705 of 1989 for declaration and permanent injunction.

6.4.2 The State Authorities have not appeared before the trial Court, though served. The trial Court has no option but to proceed the suit ex-parte.

6.4.3 The trial Court has allowed the said suit vide judgment and decree dated 20.08.1993 in favour of the plaintiff and directed the State Authorities not to take C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 possession of the suit land without any due process. The revenue authority has taken note of it and has mutated the entry to this effect in the revenue record vide Entry No.2727.

6.4.4 The State Authorities have not challenged the same before any higher forum in appeal proceedings and thus, it has attained finality.

6.5.1 After a long period, the plaintiff has again filed Regular Civil Suit No.50 of 2012 for declaration and permanent injunction before the competent Civil Court.

6.5.2 In that proceeding also, the State Authority, though served, has not appeared and contested the suit proceedings.

6.5.3 The said second suit has also proceeded ex-parte and the trial Court has granted the said suit vide judgment dated 03.05.2021 and decree dated 08.05.2012 in favour of the plaintiff.

6.6 In the meantime, the State Authorities have started proceedings under the Land Revenue Code to vacate the land in question. There were various communications between the parties between the year 2017 to 2020.

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 6.7 It is noted that though served with the notices of the trial Court in both the suit proceedings, the State Authorities have neither attended the suit proceedings nor filed their written statement nor produced their evidence before the trial Court. Therefore, both the suits were heard and disposed of ex-parte.

6.8 It is required to be observed here that time and again, the Hon'ble Apex Court has held that the law helps to those who are awakened for their rights. In the instant case, the notice issued by the trial Court in first suit being Regular Civil Suit No.705 of 1989 was served to the State Authorities. Even though, the State Authorities have not taken sufficient care to appear and contest the suit proceedings before the trial Court. The trial Court has, therefore, no option but to proceed with the suit further. The trial Court has finally allowed the suit and restrained the State Authorities to enter into the suit land. The revenue entry to this effect being Entry No.2727 of 1993 has been mutated in the revenue record. It is more relevant to note here that, the State Authorities have not challenged the said ex-parte judgment and decree by filing an appeal before the higher forum till date and thus, it has attained finality.

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 6.9 Further, on one hand, though the State Authorities have knowledge about the second suit in the year 2012, as the notice was served to the State Authorities, it was thereafter decreed ex-parte as none appeared on behalf of the State Authorities, on the second hand, the State Authorities have initiated proceedings under the Land Revenue Code against the plaintiff in the year 2017, but not challenged the said ex-parte decree before the appellate Court below in time.

7. From above it transpires that, the State Authorities have not acted in responsible manner, as can be seen from the record that though notice was served, they have not taken sufficient care to represent their case before the trial Court and further, even to challenge the ex-parte decree passed in Regular Civil Suit No.705 of 1989 as well as the decree passed in Regular Civil Suit No.50 of 2012, in time. Further, it also transpires from the record that, the State Authorities have not challenged the judgment and decree passed in Regular Civil Suit No.705 of 1989 till date and thus, it has attained finality. The State Authorities have challenged the judgment and decree passed in second Regular Civil Suit No.50 of 2012 after a long and unsatisfactory explained the delay of 3230 days. Thus, the petitioner -

State Authorities have not shown sufficient cause to condone the delay in preferring the appeal before the appellate Court C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 below against the year judgment and decree passed in Regular Civil Suit No.50 of 2012.

8. At this stage, it would be fruitful to refer to the decisions of the Hon'ble Apex Court, which are relied upon by learned advocate for the respondent in support of his submissions, which are as under, in the case of :-

(i) 2021 SCC Online Sc 1260 - Majji Sannemma alias Sanyasirao versus Reddy Sridevi - Para : 2, 3, 5, 12 to 14, 18 to 20 and 21 read as under :

"2. That the appellant herein - original plaintiff filed a civil suit being O.S. No. 40 of 2013 for permanent injunction against the respondents herein

- original defendants. That the Trial Court dismissed the said suit by judgment and decree dated 23.04.2016. That the First Appellate Court allowed the suit by quashing and setting aside the judgment and decree passed by the Trial Court, by judgment and decree dated 01.02.2017. That the original defendants - respondents herein applied for the certified copy of the judgment and order on 04.02.2017. The same was ready for delivery on 10.03.2017. That after a period of approximately 1011 days, the respondents herein - original defendants preferred the Second Appeal before the High Court. Application to condone the delay was also filed being I.A. No.1 of 2021. By the impugned order, the High Court has condoned the C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 delay of 1011 days in preferring the Second Appeal, which is the subject matter of appeal before this Court.

3. Learned counsel appearing on behalf of the appellant herein - original plaintiff has vehemently submitted that in the present case, High Court has committed a grave error in condoning huge delay

of 1011 days in preferring the appeal.

5. It is further submitted that even while condoning the huge delay of 1011 days, the High Court has also not observed that sufficient cause has been shown explaining the delay of 1011 days in preferring the Second Appeal.

12. At the outset, it is noted that by the impugned order the High Court has condoned a huge delay of 1011 days in preferring the Second Appeal by respondent Nos.1 and 2 herein - original defendants

- appellants before the High Court. While condoning the delay, the High Court has observed as under:

"In these circumstances, when there are certain questions, which require a debate in the second appeal, it is not necessary that this matter be rejected at this stage, without inviting a decision on merits. If the delay is condoned though enormous, what happens at best is to give an opportunity to the parties to canvass their respective case. Since this question being of procedure, the attempt of the court should be to encourage a healthy discussion on merits than rejecting at threshold.

Viewed from such perspective, accepting the C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 reasons assigned by the petitioner, the delay in presenting this second appeal should be condoned.

Apparently, there is no wilful negligence on the part of the petitioners nor this attempt suffers from want of due diligence. It appears being a bonafide attempt on the part of the petitioners to canvass their claim particularly when the trial court had accepted their plea, which was subjected to reversal by the appellate court. However, the petitioners should compensate the respondent by means of costs for this delay. The contention of the respondent that valuable rights are accrued to her on account of inaction of the petitioners in failing to prefer the Second Appeal within time, cannot be a significant factor in the backdrop of the circumstances found in this case.

In the result, this petition is allowed condoning the delay of 1011 days in filing the second appeal subject to payment of costs of Rs.2,000/- (Rupees Two thousand only) to the learned counsel for the respondent on or before 05.10.2021."

13. Thus from the aforesaid, it can be seen that the High Court has not observed that any sufficient cause explaining the huge delay of 1011 days has been made out.

14. The High Court has observed that if the delay is condoned no prejudice will be caused to the appellant as the appeal would be heard on merits. The High Court has also observed that there is no willful negligence on the part of the respondents C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 herein nor it suffers from want of due diligence. However, from the averments in the application for condonation of delay, we are of the opinion that it was a case of a gross negligence and/or want of due diligence on the part of the respondents herein - appellants before the High Court in filing such a belated appeal.

18. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

19. In the case of Pundlik Jalam Patil (supra), it is observed as under:

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 quickening diligence and preventing oppression. The object for fixing time limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 those who are vigilant and "do not slumber over their rights".

(ii) 2021 SCC Online SC 384 - State of Odisha versus Sunanda Mahakuda -

Paras : 3, 4 and 6 read as under :

"3. A reading of the aforesaid shows that there is no reason much less sufficient and cogent reason assigned to explain the delay and the application has also been preferred in a very casual manner. We may notice that there are number of orders of this State Government alone which we have come across where repeatedly matters are being filed beyond the period of limitation prescribed. We have been repeatedly discouraging such endeavours where the Governments seem to think that they can walk in to the Supreme Court any time they feel without any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them.

4. There is no doubt that these are cases including the present one where the Government machinery has acted in a inefficient manner or it is a deliberate endeavour. In either of the two situations, this court ought not to come to the rescue of the petitioner. No doubt, some leeway is given fro Government inefficiency but with the technological advancement now the judicial view prevalent earlier when such facilities were not available has been over taken by the elucidation of the legal principles in the judgment of this Court in the Postmaster General v. Living Media India Ltd. We have discussed these aspects in State of M.P.

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 v. Bherulal and thus, see no reason to repeat the same again.

6. The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits."

(iii) (2020) 10 SCC 654 - State of Madhya Pradesh versus Bherulal - Paras : 2, 3, 5 to 8 read as under:

"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 subsists, the appeals/petitions have to be filed as per the Statues prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by

the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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 bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 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 bonafide 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 redtape 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."

Eight years hence the judgment is still unheeded.

C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the

Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time."

(iv) (2012) 5 SCC 157 - Maniben Devraj Shah versus Municipal Corporation of Brihan Mumbai - Paras : 9, 11, 13, 14, 19, 23 to 26 and 29 read as under :

"9. The appellants contested the prayer made by the Corporation for condonation of delay by asserting that the story of misplacement of the papers is unbelievable and is liable to be discarded because the applications for condonation of delay do not mention as to when the misplaced papers were traced out by the concerned department. They also pleaded that the transfer of Shri Ranindra Y. Sirsikar from one section to the other has no bearing on the issue of condonation of delay because the Corporation has employed several advocates and no explanation whatsoever has been offered for not filing the applications for certified C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 copies of the judgment of the trial Court till 23.8.2010.

11. Shri A.S. Bhasme, learned counsel for the appellants argued that the reasons assigned by the learned Single Judge for condoning more than 7 years and 3 months delay in filing the appeals are legally unsustainable and the impugned order is liable to be set aside because the explanation given by the Corporation lacked bonafides and was wholly unsatisfactory. Learned counsel emphasized that in the absence of any denial by the Corporation that it has a battery of advocates to deal with the litigation, the transfer of Shri Ranindra Y. Sirsikar in January, 2004 to Miscellaneous Court and, thereafter, to other Courts has no bearing on the issue of delay because the suits filed by the appellants had been decided in May, 2003 and no explanation has been given as to why applications for certified copies could not be filed for 7 years and 5 months.

13. Shri Pallav Shishodia, learned senior counsel appearing for the Corporation argued that the discretion exercised by the learned Single Judge of the High Court to condone the delay does not suffer from any legal infirmity and the mere possibility that this Court may, on a fresh analysis of the pleadings of the parties, form a different opinion does not furnish a valid ground for exercise of power under Article 136 of the Constitution. Shri Shishodia submitted that in last more than two decades the Courts have time and again emphasized that while considering the question of condonation of delay, the pleadings of the parties should be construed liberally and the genuine cause of a party should not be defeated by refusing to condone the delay. In support of his argument, Shri Shishodia C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 relied upon the often cited judgments in Collector, Land Acquisition, Anantnag V/s. Mst. Katiji (supra) and State of Nagaland V/s. Lipok AO (supra). Shri Shishodia also pointed out that the appellants had raised illegal construction and if the challenge to the decrees passed by the trial Court was aborted by the High Court by refusing to condone the delay, serious injury would have been caused to the public interest.

14. We have considered the respective arguments / submissions and carefully scrutinized the record. The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.

19. In P.K. Ramachandran V/s. State of Kerala, (1997) 7 SCC 556, this Court while reversing the order passed by the High Court which had condoned 565 days delay in filing an appeal by the State against the decree of the Sub- Court in an arbitration application, observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

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23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

26. In the light of the above, it is to be seen whether the explanation given by the respondent for condonation of more than 7 years and 3 months C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 delay was satisfactory and whether the learned Single Judge of the High Court had correctly applied the principles laid down by this Court for the exercise of power under Section 5 of the Limitation Act.

29. Unfortunately, the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act."

9. The decision, which is relied upon by learned AGP Mr. Chintan Dave in support of his submissions of the Hon'ble Apex Court in the case of Sridevi Datla (supra), more particularly para 28 thereof, which is as under, is not helpful to the petitioner - State Authorities in the facts and circumstances of the present case.

"28. It is evident that the term sufficient cause is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party."

10. There is no dispute with regard to the proposition of law enunciated by the Hon'ble Apex Court in the case of Sridevi Datla (supra), however, looking to the facts and circumstances of the present case as well as considering the idle approach of the State Authorities, the same will not be helpful to the petitioner in this case.

11.1 The limitation has got a specific purpose and object and more specifically to avoid prejudice to the respective parties. Section 5 of the Limitation Act provides 'sufficient cause' is the only criterion for condoning delay.

'Sufficient Cause' is the cause for which a party could not be blamed.

11.2 The law is well settled that delay cannot be condoned as a matter of 'judicial generosity' in any special case. An order extending time should give sufficient indication that the discretion given by the law has been judicially exercised. An Appellate Court will not ordinarily interfere with the discretion exercised by the Court below. But the deciding factor is whether the exercise of discretionary power C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 is just and proper.

11.3 It is true that each day's delay need not to be explained but it is enjoined on the petitioner to make out sufficient cause for not filing the application within the period of limitation. Unconardonable delay cannot be condoned in the absence of any valid reason. Unless proper explanation is offered, the Court cannot exercise its discretion in the proper perspective to advance substantial justice. It is also well settled that when a court has exercised its discretionary power to condone the delay, the appellate Court, in exercise of its discretion, should not ordinarily interfere with such decision unless the discretion exercised is arbitrary and overlooking the interest accrued to another party to the dispute.

11.4 At the same time, the discretion must not be exercised in any arbitrary or vague or fanciful manner, but must be exercised like any other judicial discretion with vigilance and circumspection. Where delay could have been avoided by due care and caution, the Court may not exercise the discretion to condone the delay.

11.5 It is true that "sufficient cause" should receive liberal construction to do substantial justice. What is C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 "sufficient cause" is a question of fact in the given circumstances of the case. It is true that condonation of delay is discretion of the Court. Length of delay is no matter, but acceptability of the explanation is the only criterion. Thus, the Courts have taken a clear view that the intention of the parties in filing appeal belatedly after causing prejudice to the interest of the other parties, then also the delay cannot be condoned by exercising the power of discretion. Therefore all these aspects have to be considered.

12.1 Unless and until the appellant gives the sufficient cause for condonation of delay under Section 5 of the Limitation Act, is clearly mentioned that when sufficient cause is not given then the delay cannot be condoned. The law of limitation is enshrined in the legal maxim ' Interest Reipublicae Ut Sit Finis Litium' means 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, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. However, the Court while allowing such application of delay has to draw a distinction between delay and inordinate delay for want of bonafides of an inaction or negligence would deprive a party of the protection under the Act. Sufficient cause is a condition precedent for exercise of discretion by the Court for C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 condoning the delay. The Court cannot condoned the delay on sympathetic grounds alone. Looking to the longer delay as well as the negligence on the part of the petitioner - State, the Court cannot be liberal to take it easy in granting condonation of delay. Looking to the ratio laid down in the judgment of the Hon'ble Apex Court in case of Lanka Venkateswarlu reported in AIR 2011 SC 1199, wherein it was observed as under :

" Whilst considering applications for condonation of delay under S.5 of the Limitation Act, the Court do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in any systematic manner informed by reason. Whims or fancies, prejudices or predilections cannot and should not form the basis of exercising discretionary powers."

12.2 In the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others reported in MANU/SC/0932/2013, the Hon'ble Supreme Court of India made an observation as follows:

"15. From the aforesaid authorities the principles that can broadly be culled out are: 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 C/SCA/18903/2021 JUDGMENT DATED: 12/04/2023 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.

12.3 In this background while considering condonation of delay, the routine explanation may not be enough but it has to be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Court based on the fact situation. In the case of inordinate delay a strict approach is warranted because "delay defeats equity".

In the present facts and circumstances, sufficient cause for delay of 3230 days is not borne out.

This Court has no doubt in its mind that there is willful latches and negligence on the part of the petitioner -

State in defending its right. No error can be found in the impugned judgment and order. No interference is called for.

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13. For the reasons recorded above, the present petition is devoid of merits and therefore, deserves to be dismissed and is dismissed accordingly. Rule is discharged.

Sd/-

(SANDEEP N. BHATT,J) M.H. DAVE