



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 1st OF AUGUST, 2025

SECOND APPEAL No. 350 of 2009

KAILASH NARAYAN JOSHI

Versus

ARUN KUMAR JOSHI

Appearance:

Shri Girija Shankar Sharma - Advocate for proposed Legal Representatives of appellant.

Shri Bhagwan Das Sharma and Shri Awadh Sharma- Advocates for respondent.

ORDER

Heard on IA. No.6452/2021 an application under Order XXII Rule 3 CPC for substitution of legal representatives of sole appellant Kailash Narayan Joshi.

2. IA. No.5810/2025 has been filed under Order XXII Rule 9 CPC and IA.No.5809/2025 has been filed under Section 5 of Limitation Act.

IA.No.5809/2025:

3. It is mentioned in the application that appellant Kailash Narayan Joshi had expired on 26.07.2019. The proposed legal representatives of Kailash Narayan Joshi had no idea about the pendency of this appeal and they came to know for the first time only when on 21.10.2021 an information was given by counsel for



respondent about the death of appellant-Kailash Narayan Joshi and accordingly, an application under Order XXII Rule 3 CPC was filed on 16.11.2021. It is not out of place to mention here that application under Order XXII Rule 9 CPC and application under Section 5 of Limitation Act were filed on 30.07.2025.

4. Be that whatever it may be.

5. The moot question for consideration is as to whether the proposed legal representatives of sole appellant Kailash Narayan Joshi have made out a sufficient cause for condonation of delay in setting aside abatement or not?

6. IA. No.6452/2021 is supported by an affidavit of Shri Gagan Parashar who is the grandson of Kailash Narayan Joshi and is a practising lawyer. As already pointed out, all the parties are the residents of Gwalior and the case is pending before the Gwalior Bench of the High Court of Madhya Pradesh. It is beyond reconciliation that the practising advocate was not aware of the pendency of litigation. It is nowhere mentioned as to why the parties who are the residents of same city where the High Court is situated and their practising lawyer is staying, did not approach the practising lawyer to find out the status of their pending appeal. It is for the litigants to keep track of their case and they cannot shift the entire responsibility to the shoulders of their counsel.

7. Delhi High Court in the case of **Jan Chetna Jagriti Avom Shaikshanik Vikas Manch and Others Vs. Anand Raj Jhawar Sole Proprietor of M/S RR Agrotech** reported in **2025 SCC OnLine Del 878** has held as under:-

5. As mentioned above, the only explanation advanced by the appellants with regard to the colossal delay of 565 days in filing the appeal is that their erstwhile counsel kept them in dark. This explanation needs to be tested on the anvil of the judicially sanctified parameters under Section 5 of the Limitation Act.



5.1 As regards Section 5 of the Limitation Act, the undisputed propositions of law as culled out of various judicial precedents are as follows. Where an applicant is able to satisfy the court that he was precluded from filing the appeal or application other than an application under any of the provisions of Order XXI CPC from circumstances beyond his control, the court has discretion to condone the delay in filing the appeal etc. Like any other discretion, the discretion under Section 5 of the Act also must be exercised judiciously, keeping in mind the principles evolved across time. One of those principles evolved across time is that the sufficiency of cause set up by the applicant under Section 5 of the Act must be construed liberally in favour of the applicant. Unless no explanation for delay is submitted or the explanation furnished is wholly unacceptable, the court must liberally condone the delay, if third party rights had not become embedded during the interregnum. It is not the length of delay but the sufficiency of cause which has to be examined by the court, in the sense that if there is sufficient cause, delay of long period can be condoned but if it is otherwise, delay of even a few days cannot be condoned. The purpose of construing the expression “sufficient cause” liberally is to ensure substantial justice when no negligence or inaction or want of bona fides is attributable to the applicant.

5.2 No doubt, for the fault of counsel, the litigant should not be made to suffer. But that cannot be a blanket rule. Each case has to be examined on its peculiar factual matrix. The protection of the said rule, which can in appropriate cases be extended to an illiterate lay person, cannot be extended to an educated litigant or a corporate entity or the government bodies. Merely by engaging a counsel, the litigant cannot claim to be not under a duty to keep track of the case. Most importantly, where the applicant attributing such delay to the professional misconduct of the counsel opts not to take any action against the counsel, his explanation cannot be believed. Condoning delay in such circumstances, believing the bald allegations of the applicant would be tantamount to condemning the erstwhile counsel without hearing him and that too on judicial record.

5.3 In the case of *Ramlal v. Rewa Coalfields Ltd.*, AIR 1962 SC 361, the Hon'ble Supreme Court of India observed thus:



“7. In construing Section 5(of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by the lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. **This discretion has been deliberately conferred upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.**”

(emphasis supplied)

5.4 In the case of Finolux Auto Pvt. Ltd. v. Finolex Cables Ltd., (2007) 136 DLT 585 (DB), a Division Bench of this Court held thus:

“6. In this regard, we may refer to a decision of the Supreme Court in P.K. Ramachandran v. State of Kerala, (1997) 4 CLT 95 (SC). In the said decision, the Supreme Court has held that **unless and until a reasonable or satisfactory explanation is given, the inordinate delay should not be condoned.** In para 6 of the judgment, the Supreme Court has laid down in the following manner:

“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. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the



Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”

(emphasis supplied)

5.5 In the case of Pundlik Jalam Patil (dead) by LRs v. Executive Engineer Jalgaon Medium Project, (2008) 17 SCC 448, the Hon'ble Supreme Court of India held that basically the laws of limitation are founded on public policy and the courts have expressed atleast three different reasons supporting the existence of statutes of limitation, namely (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, and (iii) that persons with good causes of action should pursue them with reasonable diligence. It was observed that the statutes of limitation are often called as statutes of peace insofar as an unlimited and perpetual threat of limitation creates insecurity and uncertainty which are essential for public order.

5.6 In the case of Lanka Venkateshwarlu v. State of Andhra Pradesh, (2011) 4 SCC 363, the Hon'ble Supreme Court of India observed thus:

“19. We have considered the submissions made by the learned counsel. At the outset, it needs to be stated that generally speaking, the courts in this country including this court adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act”.

The concepts of “liberal approach” and “reasonableness” in the exercise of discretion by the courts in condoning delay were considered by the Hon'ble Supreme Court of India in the case of Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685, holding thus:

“25. We may state that **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 is normally to introduce the concept of “reasonableness” as it is understood in its general connotation.

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

27.

28. **The concepts such as “liberal approach”, “justice oriented approach” and “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially in cases where the court concludes that there is no justification of the delay....”**

(emphasis supplied)

5.7 In the expressions of this Court in the case of Shubhra Chit Fund Pvt. Ltd. v. Sudhir Kumar, (2004) 112 DLT 609, too much latitude and leniency will make provisions of the Limitation Act otiose, which approach must be eschewed by courts.

5.8 In the case of Pathapati Subba Reddy (died) by LRs v. The Special Deputy Collector (LA), 2024 SCC OnLine SC 513 the Hon'ble Supreme Court recapitulated the scope of Section 5 Limitation Act and held thus:



“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that :

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the



conditions have been imposed, tantamounts to disregarding the statutory provision”.

5.9 So far as the issue regarding professional misconduct of the counsel is concerned, the Hon'ble Supreme Court in the case of Salil Dutta v. T.M. & M.C. Private Ltd., (1993) 2 SCC 185 held thus:

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. **It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult.** The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400] must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head-office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not disposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. Maybe, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear — they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate



and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted”.

(emphasis supplied)

5.10 In the case of Moddus Media Private Ltd. v. Scone Exhibition Pvt. Ltd., 2017 SCC OnLine Del 8491, this Court observed thus:

“13. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences”.

(emphasis supplied)



5.11 Most recently on 21.11.2024, in the case of Rajneesh Kumar v. Ved Prakash, 2024 SCC OnLine SC 3380, the Hon'ble Supreme Court dealt with the situation where the applicant coming under Section 5 of the Act attributed the delay in filing the appeal to his erstwhile counsel, and observed thus:

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. **We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.** The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief”.

(emphasis supplied)

Even otherwise, non-listing of the case cannot be a ground for not filing an application under Order XXII Rule 3 & Order XXII Rule 9 CPC and under Section 5 of Limitation Act.

8. Under these circumstances, this Court is of considered opinion that appellant has failed to make out a sufficient cause for condonation of delay in filing an application for setting aside abatement.



9. Accordingly, IA. No.5809/2025 is hereby rejected. As a consequence thereof, IA. No.5810/2025 an application for setting aside abatement is rejected, as barred by time.

10. Consequently, IA. No.6452/2021, an application under Order XXII Rule 3 CPC for substitution of legal representatives of sole appellant Kailash Narayan Joshi is hereby rejected and appeal is *dismissed as abated*.

(G.S. Ahluwalia)
Judge

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