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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL APPEAL No. 8194 of 2022

BETWEEN:-

**SUDHIR S/O LATE K.L. SARAF, AGED ABOUT 51 YEARS,
OCCUPATION: PROPRIETOR OF M/S SAMKIT EARTH
MOVERS RAFFLE TOWER 8/2 OLD PALASIA INDORE
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI YASWARDHAN TIWARI, ADVOCATE)

AND

- 1. M/S TUBA CONSTRUCTIONS ZAKARIA HOUSE, 240
BERCHA ROAD MHOW DISTRICT INDORE
(MADHYA PRADESH)**
- 2. GULFAM ZAKARIA (PARTNER AT M/S TUBA
CONSTRUCTIONS) ZAKARIA HOUSE, 240 BERCHA
ROAD MHOW DISTRICT INDORE (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI AKHLAQUE KHAN, ADVOCATE FOR RESPONDENT NO. 2.

Reserved on : 02.05.2024

Pronounced on : 17.05.2024

***This criminal appeal having been heard and reserved for judgment,
coming on for pronouncement this day, the court passed the following:***

JUDGMENT

This criminal appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 being crestfallen by the order dated 15.11.2021 passed by the learned Judicial Magistrate First Class, Indore (M.P.) in SC NIA

No. 16712/2011 by which the learned Judge has acquitted the respondents.

2 . An application I.A. No. 12489/2022 has also been filed by the petitioner for condonation of delay in filing this revision. The revision petition is barred by 94 days.

3 . Learned counsel for the petitioner has submitted that the impugned order dated 15.11.2021 passed by the learned trial Court wherein, the complaint of the appellant against the respondents was dismissed in default of non-prosecution. He has also submitted that non-appearance of the appellant's counsel on the intended date i.e. 28.10.2021 only occasioned due to inadvertence on the part of counsel's clerk in noting the date incorrectly as 28.01.2022 by which time, the complaint was already dismissed. The same may be read in consonance with this application for condonation of delay. He has further submitted that the knowledge of said impugned order was derived only in the first week of July, 2022, the appellant has been steadfast in approaching this Hon'ble Court after making inquiries and obtaining certified copies of the proceedings and impugned order.

4 . It is also contended that the Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3/2022*** vide order dated 10.01.2022 has directed that the period between 23.03.2020 to 28.02.2022 would not be considered for computing limitation and in the event of expiry of limitation within such period, an additional period of 90 days shall be granted for all such matter. In light of aforesaid additional grace period of 90 days since 28.02.2022 and summer vacation of the Hon'ble High Court till 14.06.2022, the delay in filing the instant criminal appeal would only commence from 15.06.2022 onwards. Consequently, a delay of 92 days has occasioned till the date of filing this instant criminal appeal.

5. In addition to that, he has also stated that non-appearance of the appellant on two dates only occasioned due to inadvertence on the part of his counsel and the appellant should not be made to suffer personally on account of such mistake. Furthermore, the amount sought by the appellant is substantial and a significant period of time has already elapsed since the institution of the complaint in the year 2010. On these grounds, he has prayed for condonation of delay for a period of 92 days and allowed the application of leave to appeal.

6. On the other hand, counsel for the respondents submits that the petitioner is supposed to have knowledge about the Court proceedings. The appellant has filed this appeal with an intention. Therefore, an *ex-parte* order was passed by the learned trial Court after giving sufficient opportunities and the appellant was very well aware to the fact of the case. It is also submitted that the appellant has not filed the petition challenging the impugned order within the limitation period. Hence, the learned counsel for the respondents prays for dismissal of the application for condonation of delay and the petition as well.

7. On this aspect, the law laid down by Hon'ble Apex Court in the case of *Lanka Venkateswarlu (D) by LRs Vs. State of A.P. & Ors* reported in **2011 (4) SCC 363**, wherein the Hon'ble Apex Court has discussed the point of limitation, of which the extract thereof reproduced as under :-

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis

between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under [Section 5](#) of the Limitation Act, the Courts 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 a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.

8. In view of the aforesaid law, it can be observed that the Court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. However, in the case, at hand the appellant has not challenged the impugned order even after lapse of a period of grace period so granted by Hon'ble Apex Court and also after 94 days from the date of expiration of grace period.

9. Further, in a recent decision laid down by Hon'ble Apex Court in the case of *Pathapati Subba Reddy (Died) by LRs and Ors. Vs. Special Deputy Collector (LA)* reported in *[2024] 4 SCR 241* decided on **08.04.2024** in *Special Leave Petition (Civil) No. 31248/2018*, wherein the Hon'ble Apex Court has discussed the point of limitation, of which the extract thereof reproduced as under :-

23. In *Basawaraj and Anr. vs. Special Land Acquisition Officer*, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the

Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal (2013) 14 SCC 81 14 | 2 2 approach and in implementing the statute as it stands.

Paragraph 12 reads as under :

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”

25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters **laid down by** this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a

litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

10. In conspectus of the aforesaid law, it is unearthed that the law of limitation cannot be liberally interpreted if negligence, inaction or lack of bonafide, are emanated in factual matrix of the case. The Court has no power to extend the period of limitation on equitable grounds. Liberal attitude may only be adopted when the parties are able to show their bonafide conduct, explaining the delay.

11. In view of the aforesaid law and having perused the record, it is evident that this petition was filed on 13.09.2022 after a period of 302 days and after lapse of grace period so granted by Hon'ble Apex Court as well as 94 days from that period. The petitioner is unable to explain the said delay day-to-day. The contentions regarding noting wrong date, does not inspire confidence. Similarly, the submission that the petitioner was having no knowledge about the proceedings is very staggering and unbelievable. It cannot be a ground of delay.

12. In upshot of the aforesaid principle of law and factual matrix in entirety, it is concluded that this application for condonation of delay is liable to be and is hereby rejected. Consequently, the criminal revision also stands dismissed.

(PREM NARAYAN SINGH)
JUDGE