



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 2<sup>nd</sup> DAY OF MARCH, 2022

BEFORE

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ,

CHIEF JUSTICE

&

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

CIVIL MISCELLANEOUS PETITION (MAIN)

No. 1333/OF 2021

Between :-

PUTLI DEVI,

...PETITIONER

(BY MR. P.P. CHAUHAN, ADVOCATE)

AND

1. STATE OF H.P. THROUGH ITS COMMISSIONER-CUM-SECRETARY (EDUCATION), SHIMLA-2, H.P.
2. DEPUTY DIRECTOR PRIMARY EDUCATION, H.P., SHIMLA-1
3. DISTRICT PANCHAYAT OFFICER, DISTRICT SHIMLA, H.P.
4. PRADHAN, GRAM PANCHAYAT MANGSU, TEHSIL KUMARSAIN, DISTRICT SHIMLA, H.P.

**...RESPONDENTS**

**(MR. ASHOK SHARMA,  
ADVOCATE GENERAL, WITH  
MS. RITTA GOSWAMI,  
ADDITIONAL ADVOCATE GENERAL)**

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*This petition coming on for admission this day,  
Hon'ble Ms. Justice Jyotsna Rewal Dua, passed the following :*

**ORDER**

Appellant/applicant was the writ petitioner. Learned Single Judge dismissed her writ petition on 04.01.2011. This judgment has been assailed by the applicant by way of Letters Patent Appeal. The appeal is barred by 10 years, 9 months and 12 days.

2. We have heard learned counsel for the appellant/applicant. The only explanation offered by the learned counsel for the appellant/applicant for condoning the huge delay is that the appellant/applicant had engaged a counsel to file the appeal. She remained under a bonafide impression that her appeal had been filed by the said counsel. The counsel engaged by her passed away in the year 2017. It was with great difficulty that the applicant retrieved original file from the said counsel's office in the year 2021 whereafter the appeal was preferred. In

the process, delay of 10 years 9 months and 12 days has occurred.

3. In 2020 (6) Scale 553 titled **Assistant Commissioner (CT) LTU, Kakinada and ors. Vs. M/s Glaxo Smith Kline Consumer Health Care Limited**, the apex Court held that it would not be a case of violation of fundamental right muchless statutory or legal right in case the appeal presented beyond the statutory limitation period is not entertained being time barred as remedy of appeal is creature of the statute.

4. In **Civil Appeal No. 7696 of 2021**, titled **Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.**, decided on 16.12.2021, the apex Court, extracted following observations from **Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., (1962) 2 SCR 762; P.K. Ramachandran Vs. State of Kerala and Anr., 1997) 7 SCC 556** as well as the decision in the cases of **Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448** and **Basawaraj and Anr. Vs. Special Land Acquisition Officer., (2013) 14 SCC 81 :-**

*“7.1 In the case of **Ramlal, Motilal and Chhotelal** (supra), it is observed and held as under:*

*In construing S. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decreeholder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder 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 decreeholder by lapse of time should not be lightly 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 on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court 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 fide is imputable to the appellant."*

*7.2 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.*

*7.3 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, 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.”*

7.4 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. 7.5 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 those who are vigilant and “do not slumber over their rights”.

Applying the above law, the apex Court observed that there was no sufficient cause in the facts of the case explaining the huge delay of 1011 days occurred in that case. That it was a case of gross negligence and/or want of due diligence on part of the respondents in filing belated appeal.

Following observation of facts becomes material :-

*"6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously".*

5. In the facts of the instant case, the impugned judgment was passed by learned Single Judge on 04.01.2011. The time to file appeal lapsed long ago. Letters Patent Appeal against this judgment was filed on 08.12.2021. No explanation muchless any cogent one has been advanced for condoning the delay of about 11 years in filing the appeal. Delay defeats equity. The Court cannot help those who are not vigilant and slumber over their rights for years together. No indulgence can be

exercised in favour of the appellant-applicant. Hence, there is no option available with us, save and except to dismiss the application moved for condoning the delay. Ordered accordingly. ◊

**( Mohammad Rafiq )  
Chief Justice**

**2<sup>nd</sup> March, 2022 (K)**

**( Jyotsna Rewal Dua )  
Judge**

High Court of HP