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(DISTRICTS- DURG, RAJNANDGAON, BALOD, BEMETARA, KABIRDHAM)



**SCOPE OF SEC. 05 OF LIMITATION ACT, 1963
CONDONATION OF DELAY**

Submitted by-

**District and Sessions Court
Rajnandgaon, Chhattisgarh**

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District and Sessions Court
Rajnandgaon, Chhattisgarh

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CHAPTER I

INTRODUCTION

"You made delay, but Time will not, and lost time is never found again." - **Philosopher Benjamin Franklin**

Law of Limitation is basically based upon the two legal maxims "*Interest Reipublicae Ut Sit Finis Litium*" that means "The public interest of a matter so that a litigation should end" and *Vigilantibus non dormientibus jura subveninet* that means "The law assists only those who are vigilant, and not those who sleep over their rights". It is a general principle of law that law is made to protect only diligent and vigilant people but not the indolent. Law will not protect those people who are negligent or careless regarding their rights. The Law of Limitation prescribes the time-limit for different suits within which an aggrieved person can approach the court for redress or justice.

The suit, if filed after the exploration of time-limit, is struck by the law of limitation. The concept is that every legal remedy must be kept alive for a legislatively fixed period of time. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a failure and he too would have incurred quite large litigation expenses. This paper mainly focuses upon the scope of section 5 of the Limitation Act, condonation of delay. In this paper efforts have been made to examine the scope or causes which may be shown as sufficient causes to satisfy the court for condoning the delay and which unable the applicant to approach before the court within the statutory period.

Scope of Section 5 of Limitation Act ,1963 - Condonation of Delay

Justice Abdot says those who understand these two maxim clearly understand the Limitation-

Law of limitation → **Law of Public Policy**

State is a biggest litigator, otherwise it is a perennial threat. Justice Abdot says if these two maxims are not follows, then there is a serious threat.

Doctrine of Clean Hand ↔ **Legal Character**

[Document of Suppress, Wrongful affidavit, Wrong valuation, etc.]

Lord plunkett:- “Time holds in one hand a scythe; in the other hand an hour-glass. The scythe mows down the evidence of our rights, the hour glass measures the period which renders that evidence superfluous.”



CHAPTER II
HISTORICAL BACKGROUND

Regulating Act for the first time British India as British possession of superfluous Highness. Limitation Act which prevail in England also applicable in India and Doctrine of Limitation is well entrenched in the common law. The presidency towns of Calcutta, Madras and Bombay, the courts followed the English Law and in the Mofussils the courts administered the law as laid down by the regulations which were passed from time to time. In 1859, for the first time Limitation Act was passed in India and tried to applicable under the Civil Procedure Code, which came into operation in 1862. This Act was replaced by new Act of 1871 which provided for the Limitation of suits, appeals and certain applications to courts and it also provided for the acquisition of easement and the extinguishment of rights to land and hereditary office at the determination of a specified period.

The Act of 1871 was replaced by Act of 1877. The Act provided for the extinguishment of rights not only to lands and hereditary office but also to any property includes movable property. After that in 1908, it was repealed and replaced by Act IX of 1908. It had been in force for 50 years, and the need for reform of the law of limitation rationally and in tune with the changed conditions had been felt for some time.

The law commission was made to repeal the previous act and the Law Commission (3rd Report) submitted his report in 1956, however the Bill lapses. But later on after the house come again into session, it is immediately passed and received the assent of President on 5 the of October 1963. This Act came into force from January 1, 1964.

Chapter III

Objects of Limitation Act

1. The laws of limitation are founded on public policy.
2. In Halsbury's laws of England the objects of Limitations Acts have been presented as follows:- the courts have expressed at least three different reasons supporting the existence of statutes of limitation , namely-
 - a) That long dormant claims have more of cruelty than justice in them;
 - b) That a defendant might have lost the evidence to dispute the state claim;
 - c) That persons with good causes of actions should pursue them with.

In **Rajender Singh v. Santa Singh**, (AIR 1973 SC 2537), the Supreme Court of India has held “The object of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party’s own inaction, negligence or laches.

In **B.B. & D. Mfg. Co. v. ESI Corpn.**, (AIR 1972 SC 1935), the Supreme Court has observed that: *“The object of the Statutes of limitations to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so, there are two aspects of the Statutes of limitation — the one concerns with the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right if affects substantive right while that which purely pertains to the commencement of action without touching the right is said to be procedural.”*

SCHEMATIC REPRESENTATION OF THE LIMITATION ACT, 1963

There are 32 sections in total out of which two are repealed i.e. Sections 28 & 32.

Articles- 137 in total, divided into 3 parts-

1. Description of Suits (Article 1-113)
2. Appeals (Articles 114-117)
3. Applications (Articles 118-137).

Rules of limitation are prima facie rules of procedure and do not create any rights infavour of any person nor do they define or create causeof action but simply prescribe that the remedy could be exercised only up to a certain period and not susquently.

Abbott C.J. in Battley v. Faulkner, [(1820) 3 B & Aid 288] has said: “The Statute of limitation was intended for relief and quiet of the defendant and to prevent persons from being harassed at a distant period of time after the committing of the injury complained of.”

“Even though limitation harshly affects rights of a party, but it has to be applied with all its rigor when prescribed by a statute”
and the courts have no power to extent the period of limitation on equitable grounds. Their must be specific reason with day to day reason of delay.

CHAPTER IV

LEGAL FRAME WORK OF SECTION 5 OF THE LIMITATION ACT

According to **Section 5 of the limitation Act, 1963** states that *Extension of prescribed period in certain cases*— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Section 5 of the Limitation Act, 1963 enables the court to condone the delay in filing an appeal or application, if the appellant or applicant satisfies the court that he had "sufficient cause" for not preferring an appeal or making an application within such period. Any appeal or application may be accepted even after the limitation period for the same is over, if the appellant/applicant assures the court that he had a sufficient cause for not being able to file the appeal/application during the limitation period. If the court is satisfied, such delay in filing the appeal/application can be condoned irrespective of the party being a state or a private party.

The condonation of delay means the extension of prescribed time in certain cases subject to sufficient cause. The concept of condoning a delay is primarily preferred to the applications and appeal and does not cover the suits. The rationale behind the doctrine not including the suit is that this doctrine is



Scope of Section 5 of Limitation Act, 1963 - Condonation of Delay

regarded as an exception to the general rule that is Bar of limitation under the legislation and hence, it does not include suit.

The term **condonation** means an implied pardon of an offense by treating the offender as if it had not been committed. Here, the referred offense is the offense of ignoring the law of period that has been prescribed by the Limitation Act, 1963. The legal representatives of the party pray and humbly requests to the Hon'ble court to pardon their offense of ignoring the law of limitation and proceed as if no offense has been committed by the party.

SUFFICIENT CAUSE:

In order to have the advantage of the section 5, the applicant must show that he was prevented by sufficient cause from preferring application or appeal within the prescribed period of limitation. Sufficient cause means something beyond the control of the party. The words "sufficient cause" should be liberally construed. The petitioner must satisfy the court that he was not negligent and inactive. It must be considered that when the time of appeal has passed a valuable right has accrued to the successful litigant. The words "substantial cause" should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bona-fide is imputable to the applicant. While determining sufficient cause, the court should be lenient and should overlook some negligence that is an ordinary incident of human affairs, but gross negligence cannot be condoned.

In determining sufficient cause while dealing with the same expression in Order IX, rule 9 and Order IX, rule 4 of the civil procedure code, 1908 the court had been lenient and had been condoning some negligence i.e. negligence to the extent to which it is regarded as human though they never condoned gross negligence. At the same time the court had always been strict in determining

Scope of Section 5 of Limitation Act ,1963 - Condonation of Delay

proof of sufficient cause for every day which had expired after the ordinary period of limitation.

The section no doubt gives a wide discretion in determining what is sufficient cause, but the discretion has to be exercised judicially and not arbitrarily. Although the expression sufficient cause should be liberally construed so as to advance substantial justice, yet must be determined by a reference to the circumstances of a particular case. Whether or there was sufficient cause for not coming to the within the prescribed period of Limitation Act is a question of fact which is to be determined keeping to view all the attendant circumstances. The principle that substantial justice shall take preponderance over technical consideration should always be kept in view in deciding whether or not there is sufficient cause for the delay. The court must be fully satisfied as to the sufficiency of the cause and when an appeal/application is presented the court should exercise discretion guided by section 5.

Memorandum of appeal insufficiently stamped was presented within time with a prayer for extension of time to pay deficit court fee. Prayer for time rejected. Deficit court fee was later on paid though out of time with a prayer under section 5 of the Limitation Act to condone the delay. Court in the circumstances of the case found that a reasonable case for condonation of delay has been made out.

Thus a sufficient cause can properly be said to be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which by due care and attention, whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention; in other words, whether it is a bona-fide cause, inasmuch as nothing shall be deemed to be done bona-fide or in good faith which is not done with care and attention.



Scope of Section 5 of Limitation Act ,1963 - Condonation of Delay

RETROSPECTIVE OPERATION OF THE LIMITATION ACT

A Statute is regarded as retrospective it operates on cases or facts which came into existence before its commencement in the sense that it effects, even if for the future only, the character or consequence of transactions previously entered into or of other past conduct. Thus, a statute of limitation, being a law of procedure, is retrospective in operation.

EXCEPTIONS TO CONDONATION OF DELAY – SECTION 5

There are certain exceptions relating to the ambit of the condonation of delay:

- 1 The doctrine is applicable to Criminal Proceedings only. The Limitation Act, 1963 is not applicable to criminal proceedings except Article 114 and 115 i.e. in case of appeal from the order of acquittal and Article 131 regarding Revision.
- 2 The doctrine does not include “suit” and only covers appeals and applications.
- 3 Other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. The doctrine covers all appeals and applications.

CHAPTER V

SCOPE OF CONDONATION OF DELAY

The scope of section 5 of limitation act is limited, the principle of condonation of delay enacted under this section is limited to appeal, application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force but does not cover the fresh suit. Thus the provisions are applicable to both civil and criminal law.

As provided in sub-section (2) of section 29 of the Limitation Act, 1963, section 5 does not apply to the special or local law where special provisions for limitation are provided. Thus the scope and application of section 5 is restricted by sub-section (2) of section 29. The condonation of delay as mentioned in section 5 is permissible in cases of special or local law where section 5 is made applicable by express provisions. The words “the remaining provisions of this Act shall not apply in clause (b) of sub-section (2) of section 29” mean that the remaining provisions of the Limitation Act shall not apply unless they are made expressly applicable by the special or local Acts to question. If any special or local law does not provide any period of limitation to enforce any right created thereunder, section 29(2) of the Limitation Act, 1963 will not apply and the matter will be governed by the appropriate provisions of the Limitation Act.

Scope of Section 5 of Limitation Act ,1963 - Condonation of Delay

Grounds considered under condonation of delay

- 1 Subsequent changes in the law:-
- 2 Illness of the party:-
- 3 Imprisonment of a party
- 4 Party is a pardanashin woman
- 5 The party belongs to a minority group who has insufficient funds
- 6 Poverty or paupers
- 7 Party is a government servant
- 8 The delay is caused due to pendency of writ petition
- 9 The party is illiterate
- 10 Other adequate grounds: Mistake of Court, Mistake of Counsel, Delay in getting copies, misled by rulings, etc.



CHAPTER VI

BIFURCATION BETWEEN LIMITATION, LACHES AND ESTOPPEL.

Laches is based on the theory that equity aids the vigilant and not those who procrastinate when it comes to exercising their rights. If a person is slow to assert a right or claim such that the lapse of time harms the other party, the person may lose that right. "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay."

Estoppel may be found where the party to be estopped has by false language or conduct led another to do that which he or she would not otherwise have done and as a result thereof that he or she has suffered injury. Estoppel is a rule of evidence. It precludes a person from denying the truth of some statement previously made by himself. Estoppel may apply to either party. Estoppel is a rule of evidence. There can be no estoppel against statute. So a person cannot be debarred of the right to contest the issue of limitation by any prior admission.

Limitation is a procedural law. It precludes a person claiming a right to sue after the period of limitation. Limitation does not apply to a matter of defense barring a few exceptions. The defense of limitation is open even when the plaintiff's delay in instituting the suit is due to the conduct of the defendant except where it is fraudulent.

CHAPTER VII

LEADING JUDGMENTS

SCOPE OF SECTION 5 LIMITATION ACT, CONDONATION OF DELAY

Section 5 of the Limitation Act, 1963 applies in relation to question of condonation of delay in preferring criminal appeals. If the refusal to condone delay in preferring the appeal results into grave miscarriage of justice, the appellate court should condone the delay and permit the filing of the accused. Court should not adopt a pedantic or hyper-technical approach while considering the question of condonation of delay. The court should rather adopt a rationale and pragmatic approach and substantial justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain delay for every day for the reason that if delay for every day is required to be explained by the party/appellant, then why not delay for every hour, every minutes and every second.

- 1. Shital Deen vs. State of U.P., 2009 (27) LCD 1380 (All—L.B.)**
- 2. Maithili Sharan Dixit vs. The Board of Revenue, U.P., 2009 (27) LCD 660 (All)**
- 3. Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**
- 4. State of Nagaland vs. Lipok AO and others, 2005 (52) ACC 788 (SC)**
- 5. Vedabai vs. Shantaram, 2001 (44) ALR 577 (SC)**
- 6. Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222**
- 7. State of Haryana vs. Chandra Mani, 1996 (3) SCC 132**
- 8. Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750**
- 9. G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897**
- 10. Prabha vs. Ram Prakash Kalra, 1987 Suppl. SCC 339**
- 11. Collector L.A. Anentnag vs. Smt. Kitiji, AIR 1987 SC 1353**

12. O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66

13. Milavi Debi vs. Dina Nath, 1982 (3) SCC 366

14. New India Insurance Co. vs. Shanti Misra, 1975 (2) SCC 840

GENERAL PRINCIPLES OF THE CONDONATION OF DELAY:-

The Supreme Court, in the case of Collector Land Acquisition v. Mst. Katiji prescribed certain principles which need to be followed while administering the doctrine of condonation of delay:

- Ordinarily, the litigant doesn't stand to benefit by instituting an appeal late. If the Court is refusing to condone the delay, it can result in a meritorious matter being discarded and the roots of justice being defeated. However, when a delay is condoned, the highest that can happen is that the case will be decided on merits, i.e. a decision based on evidence rather than on the technical and procedural ground.
- Every day's delay must be explained" does not mean the doctrine is to be applied in an irrational manner. It must be applied in a sensible manner and not a literal one.
- Between substantial justice and technical considerations, the former deserves to be preferred for the other side cannot claim that injustice is done because of a bona fide delay.
- There is no presumption that delay is caused deliberately. The litigant has nothing to gain by resorting to delay and runs a serious risk.

Scope of Section 5 of Limitation Act ,1963 - Condonation of Delay

MEANING OF EXPRESSION “SUFFICIENT CAUSE” USED IN SEC. 5 OF THE LIMITATION ACT :-

It has been held by the Supreme Court that discretion given by Sec. 5 of the Limitation Act, 1963 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction.

(New India Insurance Co. Ltd. vs. Smt. Shanti Mishra, AIR 1976 SC 237)

BONAFIDES MUST FOR EXERCISING DISCRETION U/S. 5 OF THE LIMITATION ACT, 1963 :-

Unless want of bonafides of such inaction or negligence as would deprive a party of the protection of Sec. 5 of the Limitation Act, 1963 is proved, the application must not be thrown out or any delay cannot be refused to be condone.

(Shakuntala Devi Jain vs. Kuntal Kumari, AIR 1969 SC 575)

GRAVE MISCARRIAGE OF JUSTICE TO BE GROUND OF CONDONATION OF DELAY:-

If the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

(O.P. Kathpalia vs. Lakhmir Singh, AIR 1984 SC 1744)

“EACH DAYS’ DELAY MUST BE EXPLAINED” & ITS MEANING :

The Supreme Court has laid down that the expression “each days’ delay must be explained” does not mean that a pedantic approach should be made and it should be applied in a rational common sense pragmatic manner.

- 1. Maithili Sharan Dixit vs. The Board of Revenue, U.P., 2009 (27) LCD 660 (All)**
- 2. State of Haryana vs. Chandramani, AIR 1969 SC 1623**
- 3. Binor Bihari Singh vs. Union of India, (1993) 1 SCC 572**

4. **M/s. Shakambari & Co. vs. Union of India, (1993) Supp (1) SCC 487**

5. **Warlu vs. Gangotribai, (1995) Supp (1) SCC 37**

6. **Ramlal Motilal vs. Rewa Coalfields Ltd., AIR 1962 SC 361**

7. **Concord of India Insurance Co. ltd. vs. Nirmala Devi, AIR 1979 SC 1666**


8. **Lala Mata Din vs. A. Narayana, AIR 1970 SC 1953**

IF THE COURT HAS NO JURISDICTION TO ENTERTAIN THE SUIT, IT CANNOT DECIDE THE ISSUE OF LIMITATION ON MERITS:

Question of limitation in no case can be said to be a question of jurisdiction of the court in the context of Section 9-A CPC(as inserted by Maharashtra amendment act 1977) . Issue of limitation , therefore, cannot be decided as a preliminary issue of jurisdiction u/s 9-A CPC. If the court has no jurisdiction to entertain the suit, it cannot decide the issue of limitation on merits. **Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three-Judge Bench)**

TIME BARRED CIVIL REVISIONS & CONDONATION OF DELAY:-

According to Art. 131 of the Limitation Act, 1963, limitation period for preferring a revision u/s 115 CPC is 90 days from the date of order under challenge or from the date of knowledge of the order by the revisionist. Sec.5 of the Limitation Act applies to civil revisions also and if the delay is satisfactorily explained, the same may be condoned by the revisional court. While considering the question of condonation of delay u/s 5 of the Limitation Act, 1963, the court should not adopt a pedantic or hyper technical approach. The Court should rather adopt liberal approach. Substantive Justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain the delay for every day because if the delay for every day is asked to be explained then why not the delay for every hour, every minute and every second.

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1. **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**
 2. **State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)**
 3. **Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222**
 4. **State of Haryana vs. Chandra Mani, 1996 (3) SCC 132**
 5. **Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750**
 6. **G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897**
 7. **Collector L.A. Anentnag vs. Smt. Kati Ji, AIR 1987 SC 1353**
 8. **O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66**

TIME BARRED CRIMINAL REVISIONS & CONDONATION OF DELAY:-

According to Article 131 of the Limitation Act, 1963, the limitation period for filing revision u/s. 397 Cr.P.C. is 90 days from the date of order under challenge. Revisional court can condone the delay u/s. 5 of the Limitation Act, 1963 if the delay is satisfactorily explained by the proposed revisionist. If the revisionist was not having knowledge of the order then the limitation period of 90 days to prefer revision would be computed from the date of knowledge of the order. In the cases, noted below, it has been held that a criminal revision cannot be dismissed on a technical ground like limitation otherwise if the order passed by the lower court is otherwise illegal, that illegality will perpetuate and survive if the power of revision is not exercised by the revisional court for the technical reasons like limitation. The revisional court should apply liberal approach while considering the question of limitation in regard to a time barred criminal revision.

1. **Shilpa vs. Madhukar & others, 2001 (1) JIC 588 (SC)**
2. **State of U.P. vs. Gauri Shanker, 1992 ALJ 606 (All—Division Bench)**
3. **Paras Nath vs. State of U.P., 1982 ALJ 392 (Allahabad)**

4. Municipal Corporation of Delhi vs. Girdharilal Sapuru, AIR 1981 SC 1169

TIME BARRED APPEALS AND CONDONATION OF DELAY

(A) Period of limitation governing preferring of appeals to High Court or other Appellate Courts against judgment/order of acquittal or conviction/sentence, under different situations, is 90, 60, 30 days. As per Sec. 115(b)(ii) of the Limitation Act, 1963 period of limitation for preferring an appeal to the court of Sessions Judge is 30 days from the date of sentence or order.

(B) Where there was delay of 769 days in filing civil appeal but facts contained in the application for condonation of delay constituted sufficient grounds for condonation, the application was allowed u/s. 5 of the Limitation Act, 1963 at Rs. 10,000/- as cost and the delay was condoned. **Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)**

PLEA OF LIMITATION—WHEN NOT RAISED?

Even if the defendant intentionally does not raise the plea of limitation and the suit is *ex facie* barred by law of limitation u/s. 3 of the Limitation Act, 1963, court has no choice but to dismiss the same.

1. V.M. Salgaocar & brothers vs. Board of Trustees of Port of Mormugao, (2005) 4 SCC 613

2. Manindra Land & Building Corp. Ltd. vs. Bhutnath Banerjee, AIR 1964 SC 1336

SETTING ASIDE EX-PARTE DECREE & CONDONATION OF DELAY:-

Where defendant had admitted that he had approached plaintiff for not giving effect to decree for 1 1/2 years prior to filing of application u/o. 9, r. 13

Scope of Section 5 of Limitation Act, 1963 - Condonation of Delay

CPC, the application was clearly barred by Sec. 3, Limitation Act, 1963 as the same was moved by defendant after 1 1/2 years from the date of knowledge. So application, held was rightly dismissed u/o. 9, r. 13 CPC.

(Mahabir Singh vs. Subhash, AIR 2008 SC 276)

RESTORATION OF EXECUTION CASE AFTER 30 DAYS O. 21, R. 105, 106

CPC R/W SEC. 151 CPC R/W. SEC. 5 LIMITATION ACT :-

Sec. 5 of the Limitation Act, 1963 is not applicable in relation to execution cases u/o. 21 of the CPC. Sec. 151 CPC cannot be invoked for condonation of delay in moving application under rule 106 of Order 21 CPC for restoration of execution application dismissed in default. Hardship or injustice cannot be a ground for extending period of limitation. When the execution has been dismissed in default, the application for restoration must be filed within 30 days from the date of order and not thereafter or from the date of knowledge.

(Damodaran Pillai vs. South Indian Bank Ltd., 2005 (34) AIC 83 (SC))

LIMITATION FOR EXECUTION CASES ART. 136 OF THE LIMITATION ACT, 1963:-

Art. 136 of the Limitation Act, 1963 reads as under--- “For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court, the period of limitation would be twelve years from the date when the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the payment of delivery in respect of which execution is sought, takes place :

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

Scope of Section 5 of Limitation Act, 1963 - Condonation of Delay

WHERE NO PERIOD OF LIMITATION IS PROVIDED FOR MOVING AN APPLICATION:-

If no period of limitation is provided under the Limitation Act, 1963 for moving an application, the period of limitation for moving such application would be three years from the date when the right to apply accrues.

BURDEN OF PROOF OF LIMITATION :-

A person having the right to the possession of a movable property wrongfully taken from him by another can file a suit to recover the said specific moveable property or for compensation therefore within three years from the date when he first learns in whose possession it is. Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the knowledge of the said fact on a particular date, for the said fact would be within his peculiar knowledge. It is the duty of the plaintiff to establish, at any rate prima facie, that the suit is within time and is not barred by lapse of time. Under the Evidence Act there is an essential distinction between the phrase, burden of proof, as a matter of law and pleading and as a matter of adducing evidence u/s. 101 of the Evidence Act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other. The burden of proof, is on a plaintiff who asserts a right, and it may be, having regard to the circumstances of each case, that the onus of proof may shift to the defendant. But to say that no duty is cast upon the plaintiff even to allege the date when he had knowledge of the defendant's possession of the converted property and that the entire burden is on the defendant is contrary to the tenor of

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the article in the Limitation Act and also to the rules of evidence. **(K.S. Nanji & Co. vs. Jatashankar Dossa, AIR 1961 SC 1474)**

MISTAKE BY COUNSEL NOT ALWAYS A SUFFICIENT GROUND:-

There is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the Counsel was bona fide and it was not tainted by any malafide motive.

Lala Mata Din Vs. A. Narayanan, 1969 (2) SCC 770

NEGLIGENCE & MISLEADING OF LITIGANT BY COUNSEL & CONDONATION OF DELAY :-

where the litigant was misled by his negligent counsel, the default in delay was condoned for the litigant to pursue his remedy. **Concord of India Insurance Co. Ltd. Vs. Nirmala Devi, 1979 (4) SCC 365**

TIME CONSUME IN OBTAINING COPY OF DECREE & CONDONATION OF DELAY IN FILING APPEAL :-

Where a decree is not drawn up immediately or soon after a judgment is pronounced and a litigant feeling aggrieved by the decision applies for the certified copy of the judgment and the decree before the decree drawn up, as he had done all that he could and has made a proper application for obtaining the necessary copies, the time requisite for obtaining the copies must necessarily include not only the time taken for the actual supply of the certified copy of the decree but also for the drawing up of the decree itself. The time taken by the office or the court in drawing up a decree after a litigant has applied for its certified copy on judgment being pronounced, would be treated as a part

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of the time taken for obtaining the certified copy of the said decree. Sections 96 and 100 of the CPC provide for appeal from decree passed by a court of original jurisdiction and on appeal, by a court subordinate to the High Court respectively. Neither of these Sections permit appeal against judgment. However, where decree is not drawn within 15 days of the judgment and decree, Order 20, rule 6A permits filing of appeal with a copy of the last paragraph of the judgment which by fiction is treated as decree. Therefore, the appeal lies from the decree and not from the judgment although the word “decision” is used in sub-section (1) of Sec. 96 of the CPC.

1. Hari Shanker vs. Jag Deyee, 2000 (18) LCD 872 (All)

2. Jagat Dhish Bhargava vs. Jawahar Lal Bhargava, AIR 1961 SC 832 (Three-Judge Bench)

ELECTION PETITION & CONDONATION OF DELAY :-

Where an election petition under U.P. Municipal Corporations Adhiniyam, 1959 was filed beyond limitation prescribed and an application for condonation of delay u/s. 5 of the Limitation Act, 1963 was also filed, it has been held that the provisions of limitation shall be deemed to be excluded and provisions of Sec. 5 Limitation Act, 1963 are not application.

Bharat Singh vs. Sri Ajay, 2009 (27) LCD 1591 (All—L.B.) (D.B.)

SEPARATE APPLICATION U/S 5 FOR CONDONATION OF DELAY NOT REQUIRED :-

Where application for setting aside exparte decree was filed within 30 days from knowledge of passing of decree, it has been held that such application cannot be dismissed by taking hyper technical view that no separate application was filed u/s 5 of the limitation Act, 1963 and Art.123 of the Act also cannot be invoked.

Bhagmal Vs. Kunwar Lal, AIR 2010 SC 2991.

DELAY NOT TO BE CONDONED WHEN PARTY WAS HAVING KNOWLEDGE OF ABATEMENT THROUGH COUNSEL :-

Where the party had moved application u/s 5 of the Limitation Act,1963 for condonation of delay after over 2 years and was already having knowledge of abatement through his counsel, it has been held that such delay cannot be condoned.

- 1. Bhagmal vs Kunwar Lal, AIR 2010 SC 2991**
- 2. Balwant Singh vs Jagdish Singh, AIR 2010 SC 3043**

Majji Sannemma @ Sanyasirao Versus Reddy Sridevi & Ors.(CIVIL APPEAL NO.7696 OF 2021)

Observation of Hon'ble the High Court- 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 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



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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.

Observation of Hon'ble Supreme Court:-Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

Abhay Ram Versus Mahant Rambali Das and another (SECOND APPEAL NO. 353 OF 2002)

Hon'ble High Court Of Chhattisgarh has held:- “Sufficient cause” - In case a party is found to be negligent or found to have not acted diligently or remained inactive, delay should not be condoned.

Jagnath Prasad Versus Ashish Kumar Sahu (Cr.M.P. No. 2439 of 2018)

Judgement of Hon'ble High court of Chhattisgarh:-facts of case

The petitioner is complainant before the trial Magistrate. He filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (henceforth “NI Act, 1881”) and the said complaint was delayed by 16 days, therefore, an application as per proviso to Section 142 (1) (b) of the NI Act, 1881 for condoning the delay showing sufficient cause was also filed, but that application was not supported by affidavit of complainant.

Held- Reverting to the facts of the case in light of the judgment of the Supreme Court in the matter of Pawan Kumar Ralli (supra) qua proviso to Section 142 (1)(b) of the NI Act, it is quite apparent that application for condonation of delay as provided under proviso to Section 142 (1)(b) of the Act, 1881 was filed but admittedly it was not supported by affidavit, therefore, the trial Magistrate ought to have granted an opportunity to file affidavit to satisfy as to whether he has sufficient cause for not making complaint well within time, that was not granted and the complaint as well as application for condonation of delay in filing the complaint, both were rejected summarily without notice to the other side, which has caused prejudice to him and occasioned serious failure of justice.

Ramlal vs State Of Chhattisgarh 36 ... on 26 February, 2018 Pronounced on 26-2-2018 WA No. 97 of 2018

The Hon'ble High court of Chhatisgarh has discussed judgment of Hon'ble Supreme Court while dealing with the matter relating to condonation of delay

In Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], laid down the following principles :-

"(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(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 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.



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(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.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

CONCLUSION:-

The Law of Limitation and Condonation of Delay are two effective tools for effective litigation and quick disposal of cases. The Law of Limitation ensures that the case is filed within the prescribed period so as to avoid unnecessary delays and is the epitome of the maxim, *Vigilantibus non dormientibus jura subveniunt*. On the other hand, condonation of delay is the safeguard to the law of limitation and bars certain cases in which the delay in filing the suit is justifiable, i.e. can be backed by having “sufficient cause”.

There are cases where the Court didn't allow condoning the delay of one day, and there are cases where the Court excuses delay of several years. It varies from case-to-case and the Court has discretionary jurisdiction to determine whether a case is suitable for condonation or not.

“न्याय में इतना विलंब नहीं होना चाहिये कि वह अन्याय लगने लगे”

