

DIVISIONAL WORKSHOP FOR JUDICIAL OFFICERS

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



Date: 09.07.2022, Saturday

PREPARED BY
District and Sessions Court Balod,
Chhattisgarh

TABLE OF CONTENTS

S.N.	Subject	Page No
1.	Introduction	1
2.	Bare Reading Of Section 5	2
3.	Scope, object and applicability of section 5 of the act	3
	3.1 Object Of Section 5	3
	3.2 Object of section 5 of the act	3
	3.3 Applicability of section 5	4
4.	Applicability of section to period prescribed by special or local laws	4
5.	Non-applicability of section 5 of the act	5
6.	What does condonation mean, in context of the limitation act?	6
7.	Nature of power vested in the court under section 5 of the act	6
8.	Principle embodied under section 5 of the act	10
9.	Determination of sufficient cause	11
10.	Test to determine sufficient cause	12
11.	Some instances where condonation can be granted	12
12.	Some instances where condonation can-not be granted	14
13.	Exception to condonation of delay	16
14.	Conclusion	17

INTRODUCTION

Law of Limitation is based on the two legal maxim “**Interest Reipublicae Ut Sit Finis Litium**” that means it is for the general rule of the welfare that a period be put to litigation and “**Vigilantibus non-dormientibus Jura subvenient**” that means the law helps those who are alert and not sleeping.

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 careless about 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 expiration 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. However, what if a litigant has, in fact been vigilant, but there were certain circumstances which hindered him in filing his Suit on time? He cannot be deprived of his Right to Sue without any fault on his part, where there were other forces at play preventing him in doing so. This is where the component of Condonation of Delay comes into play. “Condonation of Delay” as the name suggests is a pardon plea.

This presentation mainly focuses on the fact that how section 5 of the Limitation Act, 1908 saves the rights and interests of the litigants who have failed to file the proceedings within the prescribed period of limitation. In this paper efforts have been made to examine the factors 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. It has also been tried to develop a comprehensive idea for understanding the fact that condonation of delay is a matter of discretion of the court and no one can claim it as of right.

BARE READING OF SECTION 5 OF THE ACT

The Limitation Act enunciates the principle of Condonation, quite early on, in Section 5 of the Act, which reads as under:

“Extension of prescribed period in certain cases – Any appeal or any application, other than an application under any of the provisions of Order 21 of the code of Civil Procedure Code, 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 in this section.*

Though an explanation to the section 5 intimate the nature of facts which can be considered as sufficient cause in case of section 5. However there is no proper definition to determine “sufficient cause” under the Act. The Hon'ble Supreme Court, **in Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81**, has held. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”

A sufficient cause can properly be said to have a cause which is beyond control for the party invoking aid of section 5 of Limitation Act, 1908.

The expression “sufficient cause” implies the presence of legal and adequate reasons. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay.

SCOPE, OBJECT AND APPLICABILITY OF SECTION 5 OF THE ACT

A. SCOPE OF SECTION 5

The scope of section-5 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.

B. OBJECT OF SECTION 5 OF THE ACT

The object of Section 5 is to regulate the course and manner for providing relief or remedy where substantive rights are pressed in legal technicalities.

In **Ramlal, Motilal & Chotelal v. Rewa Coalfields Ltd.** (AIR 1962 SC 361), the Hon'ble Supreme Court held that while

interpreting Section 5 of the Limitation Act, two important considerations need to be made:

1. *Firstly, In case of expiry of prescribed period of prescription, a right in favor of the decree-holder arises, according to which the decree can be treated as binding between the parties.*
2. *Secondly, If sufficient cause of delay in filing appeal has been given, it is the Court's discretion to condone the delay and admit the appeal.*

The fact that the appellant was misled by tools of the High Court in computing the limitation period is sufficient cause under Section 5 to condone the delay.

C. APPLICABILITY OF SECTION 5

Section 5 can be invoked only in case of applications and appeals but not to the original proceedings. The provisions are applicable to both civil and criminal law. The provisions of section-5 are equally applicable to the government as well as to the private individual. Every case shall have to be dealt with on its individual merit depending on the facts and circumstances related therewith.

APPLICABILITY OF SECTION TO PERIOD PRESCRIBED BY SPECIAL OR LOCAL LAWS

For the purpose of determining the period of Limitation prescribed for any appeal or application by any special or local law, Section 29 (2) of this Act makes the provision.

The following are the examples of applications under other enactments to which the present section 5 has been held to be applicable:-

1. Revision under provincial Small cause courts Act.
2. Application under Order 09 Rule 13 Civil Procedure Code.
3. An Application under Order 34 Rule 5 Civil Procedure Code for passing final decree.
4. Appeal under Hindu Marriage Act.
5. Appeal and Application in the Land Acquisition Act.

NON-APPLICABILITY OF SECTION 5 OF THE ACT

1. Delay in filing appeal against order of Motor accident claims Tribunal can be condoned under the proviso to section 110-D(1) of the M.V. Act. Therefore Section 5 of the Limitation Act is not applicable.
2. Provisions of Section 4 to 24 of Limitation Act here no application to the Penal Provisions of Section 138 to 142 of the Negotiable Instruments Act, 1881.
3. Section 5 does not apply on Land Revenue Laws.
4. Section 5 has no application to tribunals.
5. Section 5 Limitation Act can not prevail over the proviso to section 34 (3) of Arbitration and Conciliation Act, 1996.
6. Section 5 Limitation Act does not apply to election petitions.

WHAT DOES CONDONATION MEAN, IN COTEXT OF THE LIMITATION ACT?

Condonation of delay means the act of condoning the delay in filing an appeal or application by the respective courts. Each statute gives a time limit within which any suit, appeal or application is to be filed under them to the courts/respective authorities. The time limit prescribed is known as the limitation period of the suit or appeal. Section 5 of the Limitation Act talks about the condonation of delay. It provides that the court can accept any appeal or application when filed after the limitation period if the appellant or applicant shows that he had a sufficient cause for not filing the appeal or application within the prescribed period."sufficient cause" a major element to condone delay.

NATURE OF POWER VESTED IN THE COURT UNDER SECTION 5 OF THE ACT

- **General Principles:-** The words “may be admitted” indicates that a vast discretionary power is granted to the court under this section. No parameter is given to determine the sufficient cause. It depends entirely on the will to court to declare any cause as sufficient enough to keep the party away from filing any appeal, review or revision. Thus Section 5 of the Limitation Act, 1908 vests on the court the discretion to admit appeal, revision, review or application after the expiry of the prescribed period on sufficient ground but such discretion must be exercised judicially and not arbitrarily. As well as Supreme Court our Hon’ble high court also discuss regarding general principals about condonation of delay. In case of

Ramdayal Sahu vs. Dasmal Bai (AIR online 2020 Chh 1131)

In this case Hon'ble Chhattisgarh high court discuss the matter of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649.**

- **Condonation of Delay to be Decided First**

An application for condonation of delay should be decided first. Posting of the matter for final hearing of appeal before such decision would be improper.

In the **Ram Prasad Vs. Deputy Director of Consolidation, Hardoi and others, Consolidation No. - 6574 of 2016 Pronounced on: February 03, 2022,** The Hon'ble High Court held that:

"As far as the issue regarding hearing of the application seeking condonation of delay and the appeal simultaneously is concerned, in our view, firstly the application has to be considered. Only thereafter, the appeal can be considered on merits but there is nothing in law which requires hearing of appeal on merits to be postponed mandatorily after acceptance of the application seeking condonation of delay. Both can be taken up on the same day. However, the appeal has to be heard on merits only after the application seeking condonation of delay has been accepted."

- **Liberal Approach:-** Court should adopt liberal and justice oriented approach for the purposes of condonation of delay but the discretion to be exercised under this section should not be so much

liberal so that it does not encourage negligence on the part of the applicant to defeat the purpose of the law.

In case of Shakuntala Devi Jain v. Kuntal Kumari

The question before the Court was whether the delay in filing appeal should be condoned under Section 5 of the Limitation Act. As laid down in this case, Section 5 of the Limitation Act gives Court discretion, which has to be exercised in a way in which judicial power and discretion ought to be exercised upon well-understood principles. The words “sufficient cause” need to receive a liberal construction. The Bench of three Judges held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

- **Reasonable or satisfactory Explanation:-**The plea of limitation does give rise to a benefit in law to the opposite party but the condonation of such delay itself prescribed under the provision of Act give wide power to the Court to condone the delay. In the fact and circumstances of the case and especially when sufficient explanation is rendered in support thereof **2008 (1) Pun LR 162**
- **Length of delay:-** Condonation of delay is matter of discretion of the Court. Section 5 does not say that such discretion exercised only if delay is within certain limit. Length of delay is no matter.
- **Every day's delay must be explained:-** In order to avail himself of the Section the parties in default must satisfy the Court that he had sufficient cause for not making a requisite application right up

to the date on which the application is presented. In other words he must satisfactory account for each days delay.

In the case of **Collector, Land Acquisition, Anantnag and others v. Mst. Katiji and others, 1987 AIR 1353**, their Lordships of Hon'ble Supreme Court held that court should adopt liberal and justice oriented approach for the purposes of condonation of delay.

Relevant portion from the case of Mst. Katiji (supra) is reproduced as under:-

- 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

- It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

PRINCIPLE EMBODIED UNDER SECTION 5 OF THE ACT

The section invoke the principle that the right to get justice should not be taken away from the litigants where they remain restrained to file an appeal, review or revision because of existence of some sufficient cause.

*Here it is important to mention that In numerous cases our Hon'able high court discuss "sufficient cause". One of them a case **Ramvariksha Gond VS. Babulal Gond (judgment date 14/01/2021)** Hon'ble Shri Justice Sanjay K. Agrawal discuss two landmark judgment of Apex Court.*

*First is **Collector Land Acquisition, Anantnag and Others vs. Mst. Katiji and Others (1987) 2 SCC 107**. In which Hon'ble apex court held that "While construing the meaning of 'Sufficient Cause' under Section 05 of the Limitation Act, 1963 held that the courts should adopt a liberal and justice oriented approach and condoned the delay of four days in filling appeal, under section 05 of the limitation act, 1963.*

The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "Sufficient Cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do

even-handed justice on merits in preference to the approach which scuttles a decision on merits.

Similarly, The Supreme Court in **N. Balkrishnan Vs. M Krishnamurthy, (1998) 7 SCC 123** observed that sufficient cause has to be construed liberally especially when the delay is not deliberate and malafide.

It is further held that Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate . This court has held that the words “sufficient cause” under section 5 of the limitation act should receive a liberal construction so as to advance substantial justice.

DETERMINATION OF SUFFICIENT CAUSE

There is no hard and fast rule to determine sufficient cause; courts consider each case according to its own fact when determining sufficient cause. But a guiding principle has been established by the

courts and that is where because of lapse of time a valuable right has accrued to the other side. It should not be taken away.

TEST TO DETERMINE SUFFICIENT CAUSE

Courts have established certain tests to determine the fact of sufficient cause; 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. The party must not have any bad intention. A sufficient cause being a question of fact varies from case to case and ultimately it rests on satisfaction of the court.

in the case of **New India Insurance Co. Ltd. V. Shanti Misra AIR 1976 SC 237 (SC)**, Hon'ble Supreme Court has held that,

"What constitutes sufficient cause can't be laid down by hard and fast rules. In this case, it was held that discretion given by Section 5 shouldn't be defined or made concrete in such a manner that it converts a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction."

SOME INSTANCES WHERE CONDONATION CAN BE GRANTED

- **Mistake in calculation**

A mistake in calculation as to the last day of limitation is not the same thing as negligence. In matter of calculation it is

common knowledge that people do commit mistake. Bonafide mistake have to be taken note by the Courts in considering whether the delay should be condoned **2001 AISC 4673 (4674) Del.**

- **Wrong legal advice**

A mistake of law committed by a parties, legal adviser will stand on the same footing as a mistake by the party himself. If the mistake of lawyer is one that can be condoned under the Section and party has acted on his advice. The party is not prevented on from replying upon if for claiming indulgence under this section.

- **Inadvertence of Lawyer**

Where the advocate appearing for the party an affidavit in support an application of condonation of delay in filing the appeal, pleading exceptional pressure of work, want of assistance and inadvertence taking a blame upon himself that there was no reason to believe that the affidavit is not true. The delay was condoned. **(1965) 2 Mad LJ 567.**

- **Illness of party**

A mere plea of sickness is not a sufficient cause for condoning the delay in filing an appeal or an application. Unless the effect of the illness was such as, in the circumstances, will afford reasonable excuse for the delay. **2010 (4) AIR Jhar 58.** It includes the nature and severity of disease and facts encompassing the failure to act.

- **Time barred civil revisions & condonation of delay**

According to Art. 131 of the Limitation Act, 1963, limitation period for preferring a revision under section 115 CPC is 90 days from the date of order under challenge or from the date of knowledge of the order by the revisionist. Section 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.

The following are the instances where condonation can be granted:-

- Subsequent changes in the law.
- Imprisonment of the party: However, mere detainment is not sufficient to cause. Varies on a case-to-case basis.
- Party is a pardanashin woman.
- Party belongs to a minority group with insufficient funds.
- Poverty or paupers.
- Party is a government servant: A government servant may not have an incentive in fulfilling the task. Therefore, a certain latitude is permissible in such a case.
- Delay due to the pendency of the writ petition.
- Party is illiterate.
- Other adequate grounds: Mistake of Court, Mistake of Counsel, Delay in getting copies, misled by rulings.

SOME INSTANCES WHERE CONDONATION CAN-NOT BE GRANTED

- **Mistake by counsel not always a sufficient ground**

In the case of **Lala Mata Din v. A. Narayanan, 1969 (2) SCC 770 (SC)**, the Hon'ble Supreme Court held that 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.

- **Negligence of party**

The words "sufficient cause" means some cause beyond the control of the party.

- **Poverty or want of funds**

A poverty or wants of funds is not a sufficient cause withing the meaning of the Section.

- **Imprisonment of party**

The imprisonment of the party may constitute a sufficient cause for excusing delay in filing an application or appeal but mere fact that the party was in Jail without anything more is not necessarily a sufficient cause for extension of the time.

- **Amendment of decree**

Amendment of the decree U/s 152 CPC not give a fresh starting point of time for appeal. Every amendment does not necessary entitle a party to claim an extension of time.

- **Mistake of fact of party or his agent**

The negligence of the party's agent is, in law, the negligence of the party himself and will not furnish the sufficient cause for delay **AIR 1924 ALL 176.**

EXCEPTION TO CONDONATION OF DELAY

There are certain exceptions relating to the ambit of the doctrine of condonation of delay (Section 5):

- The doctrine is applicable to Civil Proceedings only.
- The doctrine does not include “suit” and only covers appeals and applications.
- 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.

Application to set aside the abatement of a suit or appeal do start from the date of death of the deceased respondent

The case of Union of India v. Ram Charan (deceased) through his Legal Representatives; A.I.R. 1964 S.C.215 (supra) denotes that limitation application to set aside the abatement of a suit or appeal do start from the date of death of the deceased respondent. The first schedule to Article 171 of the Limitation Act provides that it does not provide limitation to start from the date of appellant's knowledge thereof.

The Hon'ble Supreme Court in the aforesaid decision has also observed

"8. There is no question of construing the expression 'sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice".

Extension of limitation by Supreme Court due to Covid-19 pandemic also applies period prescribed for filing of written statement

in the Suo-moto petition of **In Re: Cognizance for Extension of Limitation [2021 (5) KHC 508** Three-Judge Bench of the Hon'ble Supreme Court held that in computing the period of limitation for any suit, appeal, application or proceedings, the period from 15.03.2020 till 12.10.2021 shall stand excluded.

CONCLUSION

It is well known quote of **William E. Gladstone** that “**Justice delayed Justice denied**”. The whole sole purpose of Section 5 is mitigating unnecessary delay. The Law of Limitation and Condonation of Delay are two effective tools for effective litigation and quick disposal of cases.

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. The crux of above discussion that this responsibility lies on judges that how they use their discretionary power.

-----XXX-----