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A Paper Presentation On

The Scope of Sec 5 of the Limitation Act 1963 and
Condonation of Delay in Civil and Criminal
Proceedings with Critical Examination of the concept
of "Sufficient Cause"

Submitted To

CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR (C.G)

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INTRODUCTION

The law of limitation prescribes the time limit which is given for different suits and proceedings to the aggrieved person within which they can approach the court for redress or justice. The main object to limit any legal action is to give effect to the maxim '*interest reipublicae ut sit finis litium*', which means that in the interest of the State it is required that there should be a limit to litigation and the maxim '*Vigilantibus non dormientibus jura subveniunt*' which means that court protect those who are vigilant about their own rights.

The intention behind the concept of limitation is that "controversies are restricted to a fixed period of time, lest they would become immortal while men are mortal." This statutory restriction after a certain period of time gives a status to enforce an existing right. Simply, it neither creates any right in favour of any person nor does it define or create any cause of action against the particular person but it prescribes about the remedy. These remedy can be exercised only up to a certain period of time and not subsequently. The major purpose of the statute of the Limitation Act, 1963 is not to destroy or infringe the rights of an aggrieved person but to serve public in a better way and to save time. This statute is basically based on public policy for fixing a life span for the legal remedy which may be taken and to seek remedy in time with the purpose of general welfare.

THE LIMITATION ACT, 1963

The Limitation Act, 1963, was legislated on 5th October, 1963, which came into force on, 1st January, 1964. The Act provides the limitation period and explains what's to be included and what's to be barred while calculating the limitation period for a 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 operation when filed after the limitation period if the complainant or aspirant shows that he had a sufficient cause for not filing the appeal or operation within the prescribed period.

In *N. Balakrishnan v. M.A. Krishnamurthy* (1998) 7 SCC 123, it was held by the Hon'ble Supreme Court that the Limitation Act is based upon public policy which is used for fixing a life span of a legal remedy for the purpose of general welfare. It has been pointed out that the Law of Limitation are not only meant to destroy the rights of the parties but are meant to look to the parties who do not resort to the tactics but in general to seek remedy. The idea with regards to this is that every legal remedy must be alive for a legislatively fixed period of time.

SCOPE OF SECTION 5 OF THE LIMITATION ACT, 1963 AND CONDONATION OF DELAY

Section 5- 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 CPC, may be admitted after the prescribed period, if the appellant or 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 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 a sufficient cause within a meaning of the sub-section.

According to this section 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.

In the case of *O.P Kathaplia v. Lakhmir Singh AIR 1984 SC 1744* the Hon'ble Supreme Court of India held that 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.

In the case of *Shital Deen v. State of Uttar Pradesh* 2009 SCC Online All. 1045, it was held that while considering the question of condonation of delay, the court should rather adopt a rationale and pragmatic approach.

The Hon'ble High Court of Chhattisgarh in the case of *State of Chhattisgarh v. Ankit Mishra* 2024 SCC Online Chh 5789 held that- "Section 5 of the Limitation Act, 1963 provides that 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 generally, the Courts adopt a liberal approach in considering application for condonation of delay on ground of sufficient cause under Section 5 of the Limitation Act, 1963. Here is gross negligence or deliberate inaction or lack of bonafide is imputable to the petitioner seeking condonation of the delay. This Court is of the opinion that a bonafide mistake on the part of the State is a good ground for condonation of delay, however, the State counsel has not provided the sufficient cause for filing the appeal as well as for delay, specially when the trial Court has acquitted the respondents herein on the mere allegation. As such, the petition barred by delay and laches and is not liable to be entertained".

The Hon'ble High Court of Chhattisgarh in the case of ***Virendra Kumar Shukla v. Rajendra Shankar Shukla and others*** 2022 SCC Online Chh 2693, held that on perusal of records, what is evidently clear is that the only ground that the appellant has stressed seeking for condonation of delay was the appellant suffering from the Parkinson disease since 2015 onward. It clearly reflects that the commencement of the proceedings from 05.12.2017 uptill 25.02.2019 the appellant had been continuously appearing in the mutation proceedings, civil suits in the year 2017 and 2018 were also instituted by the appellant. From the plain perusal of the aforesated records which are not in dispute it clearly reflects that the appellant infact as such was not indisposed or was having any serious medical ailment which prevented him from moving out of his house or even unable to contact his Lawyer for preferring the present appeal. The grounds and reasons mentioned in IA No.1 therefore does not seem to be proper, legal and justified. The grounds and reasons raised by the appellant in his application for condonation of delay therefore stands falsified and has been raised only for the sake of getting the sympathy of the court. , this court is of the firm view that the appellant has not been able to make out a strong case for grant of condonation of the inordinate delay of 450 days in filing of the appeal.

MEANING OF CONDONATION OF DELAY

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 condonation of delay is a remedy and not a right to the dissatisfied party. If the party successfully provides a sufficient cause, the Courts have the power to condone the delay.

In the case of *Collector, Land Acquisition Anantnag v. Mst. Katiji* 1987 AIR 1353, it was held that while considering the question of condonation of delay u/s. 5 of the Limitation Act, 1963, the court is not required to adopt a hyper technical or pedantic approach. It should rather adopt a liberal approach and every day's delay should not be expected to be explained. If the party is expected to explain the delay for every day then why not the delay for every hour, every minute and every second. Substantial justice should be preferred over technical justice .

The Condonation of delay under Section 5 of Limitation Act applies to civil as well as criminal proceedings.

CONDONATION OF DELAY IN CIVIL PROCEEDINGS

◆ **Time barred civil appeals and condonation of delay:**

According to Art. 116 of the Limitation Act, 1963, limitation period for preferring a appeal to Hon'ble High Court from any decree or order under Code of Civil Procedure is 90 days from the date of decree or order. Also, as per Art. 116 of the Limitation Act, 1963, limitation period for preferring a appeal to any other court from any decree or order is 30 days from the date of decree or order.

In *Sainik Security vs. Sheela Bai*, AIR 2008 SC 1688 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.

In a case from The Hon'ble High Court of Chhattisgarh - *Buddhu vs Daya Bai* 2021 SCC Online Chh 349 - the first appeal was filed on 18.2.2009 with a delay of 70 days, but the appellant/plaintiff filed application for condonation of delay supported by affidavit as his suit was dismissed on 31.10.2008 and he preferred first appeal with a delay of 70 days supported by application for condonation of delay. The reason assigned is that he

is saint and used to travel across the country for religious purpose, therefore, he could not come to know about the judgment and decree of the trial Court and therefore could not prefer appeal right in time. He filed affidavit in support of application for condonation of delay, which was not controverted by the defendants by filing counter-affidavit. The Hon'ble High Court is of the view that reason assigned by the plaintiff appears to be sufficient as having suffered the decree the plaintiff would not get advantage by filing appeal with a delay of 70 days particularly when he has lost the suit and he has been non-suited by the trial Court. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court was set aside and delay of 70 days in filing appeal was condoned.

◆ **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.

◆ **Setting aside ex-parte decree & condonation of delay-**

According to Art. 123 of the Limitation Act, 1963, limitation period to set aside a decree passed ex parte or to rehear an appeal decreed or heard ex parte is 30 days from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

◆ **Restoration of execution case after 30 days O. 21, r. 105, 106 CPC r/w Sec. 151 CPC r/w. Sec. 5 Limitation Act-**

In the case of *Damodaran Pillai v. South Indian Bank Ltd.* AIR 2005 SC 3460, it was held that 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

◆ **Limitation for execution cases-**

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.”

◆ **Order 21, rule 32 CPC & Art. 135/136 Limitation Act-**

In the case of *Ram Singh and ors. v. Salig Ram and ors.* AIR 1975 ALL 11, an application for enforcement of a decree granting perpetual prohibitory injunction was moved u/o. 21, r. 32 CPC, it has been held by the Hon’ble Allahabad High Court that Art. 136, proviso and not Art. 135 of the Limitation Act, 1963 would apply in the case as Article 135 prescribes a limitation period of 3 years for an application for enforcement of a decree granting a mandatory injunction whereas the proviso to Article 136 expressly stipulates that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

CONDONATION OF DELAY IN CRIMINAL PROCEEDINGS

◆ **Time barred criminal appeals and condonation of delay –**

According to Article 114 of the Limitation Act, 1963, the limitation period for appeal from an order of acquittal is 90 days from the date of the order appealed from and 30 days from the date of the grant of special leave.

According to Article 115 of the Limitation Act, 1963, the limitation period for appeal from a sentence of death passed by a court of session or by Hon'ble High Court in the exercise of its original criminal jurisdiction, is 30 days from the date of the sentence. And the limitation period for appeal from any other sentence or any order not being an order of acquittal to the Hon'ble High Court is 60 days from date of the sentence or order. Also, the limitation period for appeal from any other sentence or any order not being an order of acquittal to any other court is thirty days from the date of the sentence or order.

In the case of *Ajay Gupta v. Raju @ Rajendra Singh Yadav* AIR 2016 SC 3284, it was held that the delay in filing appeal against acquittal can be condoned under section 5. But sufficient

cause must be established to condone the delay by the appellate court.

◆ **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 (section 438, 440, 442 of The Bhartiya Nagarik Suraksha Sanhita, 2023) 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 various cases 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.

SUFFICIENT CAUSE

‘**Sufficient cause**’ means there should be adequate reasons or reasonable ground for the court to believe the applicant was prevented from proceeding with the application in a Court of Law. Section 5 allows the extension of the prescribed period in certain cases on sufficient cause being shown for the delay.

The term sufficient cause has nowhere been defined in the act; however, it seems that the courts have construed it quite liberally in order to meet the ends of justice, so much so that meritorious matters are not disregarded solely on the basis of a slight delay. It should also be kept in mind that the law of limitation in itself was founded on the principles of public policy in order to ensure that the parties approach the court for vindication of their rights without causing unreasonable delay.

The term seems to have a wide and comprehensive import. Whether or not the furnished reason would constitute a sufficient cause will depend on facts of each case. There is no prescribed formula which can be applied for accepting or rejecting the explanation provided for proving the delay. In a case where a party has been negligent, the approach cannot be the same and liberal interpretation of the same will be discouraged. While considering the matter the courts should not disregard the fact that by not taking steps within the stipulated time, a valuable right has accrued to the

other party which should not be undermined by condoning delay in a routine like manner.

In the case of ***Ram Nath Sao v. Gobardhan Sao*** AIR 2002 SC 1201, the approach taken was that ideally, the courts should strike a balance between the subsequent impact of the order it was going to pass upon the parties either way.

In ***State of West Bengal v. Administrator*** AIR 1972 SC 749: The Hon'ble Supreme Court held that the extension of time is a matter of concession and cannot be claimed by the party as a matter of right. It is difficult and undesirable to precisely define the meaning of sufficient cause. It must be determined by the facts and circumstances of each case. However, a sufficient cause should fulfill the following essentials:

- It must be a cause which was beyond the control of the party invoking it.
- He must not be guilty of negligence.
- His diligence and care must be shown.
- His intention must be bonafide.

In ***State (NCT of Delhi) v. Ahmed Jaan*** AIR 2009 SC(Supp) 695, the expression sufficient cause should be considered with pragmatism in a justice-oriented approach rather than the detection of sufficient cause for explaining every day's delay.

In ***G. Ramagowda v. Special Land Acquisition Officer*** AIR 1988 SC 897, it was held that the expression sufficient cause must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are inaction or lack of bona fide is imputable to the party seeking condonation of delay.

In ***Shakuntala Devi Jain v. Kuntal Kumari*** AIR 1869 SC 575, it was held that section 5 gives the court a discretion with respect to 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 term sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.

The Hon'ble High Court of Chhattisgarh in the case of ***Ramdayal Sahu v. Dashmat Bai*** 2020 SCC Online Chh 2239 held that a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act, has to be adopted and appeal has to be decided on merits unless the case is hopelessly without merit. "Sufficient cause" within the meaning of Section 5 of the Limitation Act has to be construed liberally so as to advance substantial justice especially when the delay is not deliberate and outcome of mala fide.

The Hon'ble High Court of Chhattisgarh in the case of ***Abhay Ram v. Mahant Rambali Das***. 2014 SCC Online Chh 2, held that- "In the absence of any sufficient cause, the application under Section 5 of the Limitation Act cannot be entertained as a matter of routine, particularly, when the delay in filing of the instant second appeal is for a period of approximately 1700 days i.e. almost about 3 years time. In view of the above, since sufficient cause has not been explained by the appellant/plaintiff, the application, under Section 5 of the Limitation Act, 1963, for condoning the delay in filing of the instant second appeal, is rejected".

In Red Bull Ag vs Pepsico India Holdings Pvt Ltd & Anr. 2022 SCC Online Del 969, the facts of the case show that the defendant was justifiably believing that summons had not been served/defendant had not been called upon to file its written statement. Further, the parties were before the mediation centre trying to settle the matter through an alternative dispute resolution mechanism. it was held that these background facts, in courts opinion would constitute sufficient cause to explain the delay on the part of the defendant in filing the written statement.

GENERAL PRINCIPLES TO BE FOLLOWED

In the case of *Collector, Land Acquisition v. Mst. Katiji* AIR 1987 SC 1353 the Hon'ble Supreme Court held as follows:

“ The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this; when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every

hour's delay, every second's delay? The doctrine has to be applied in a rational and pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by restoring to delay. In fact, he runs a serious risk.

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

In Ramlal v. Rewa Coalfields Ltd. 1962 AIR 361: The Hon'ble Supreme Court of India held that “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 or 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

lapse of time should not be lightheartedly 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”.

In the case of *Pathapati Subba Reddy v. Special Deputy Collector* 2024 SCC Online SC 153 the Hon'ble Supreme Court held that :

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

- 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,
- 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.
- Merits of the case are not required to be considered in condoning the delay.
- 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.

The Hon'ble High Court of Chhattisgarh in the case of ***Ramdayal Sahu v. Dashmat Bai*** 2020 SCC Online Chh 2239 laid down the guidelines summarising the obligation of the court while dealing with application for condonation of delay and approach to be adopted while considering grounds for condonation, which are as under:—

- An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

The Hon'ble High Court of Chhattisgarh in the case of ***The Superintending Engineer, National Highway Circle, Public Works***

Department, Government Of Chhattisgarh v. ECI. Keystone 2014 SCC Online Chh 4533, held that- “it is the trite law that merely because Government authorities is involved, a different yardstick for condonation of delay cannot be laid down”.

- **Where no period of limitation is provided for moving an application-**

According to Article 137, 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.

- **Is there a time limit for how much delay can be condoned by the court?**

No, there is no specific or fixed time limit for delay that can be condoned by the court. The law does not prescribe any maximum limit for condoning delay. Instead, the court has discretionary power to condone any length of delay, provided the party seeking condonation can establish “sufficient cause” for the delay. However, the longer the delay, the more rigorously the court will examine the reasons provided. Courts tend to exercise this discretion carefully, and delays caused by negligence, indifference, or intentional delay are unlikely to be condoned. The court’s primary consideration is

whether the cause of the delay is reasonable and justifiable, with each case being judged on its specific facts and circumstances.

In the case of *N Balakrishan v. M. Krishnamurthy* AIR 1998 SC 3222, the court elaborated on the point that in the cases of condonation of delay, the acceptability of the explanation is the sole criterion; the duration of delay does not matter. There have been cases where a slight delay in filing the application has not been condoned due to unacceptable reasons; whereas on the other hand, the court has neglected years of delay as the reason provided was satisfactory.

- **Burden of proof of limitation:**

It is the duty of the plaintiff to establish, that the suit is within time and is not barred by lapse of time. Under the Indian Evidence Act/ The Bhartiya Sakshya Adhinyam, 2023 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 Indian Evidence Act (section 104 of The Bhartiya Sakshya Adhinyam, 2023) 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 the article in the Limitation Act and also to the rules of evidence.

- **What burden of proof must be met for the court to condone a delay?**

To get a delay condoned in court, the party must prove "sufficient cause" for the delay, showing that the reason was valid, unavoidable, and beyond their control, without negligence or bad faith. It is crucial to demonstrate that the party acted in good faith, making genuine efforts to meet the deadline but was prevented by specific circumstances like illness, incorrect legal advice, or procedural delays. The party must also show prompt action once the cause of the delay is resolved. Courts require documentary evidence such as medical certificates or affidavits to support the claim and assess whether there was no malicious intent behind the delay. Ultimately, the court uses its discretion, focusing on justice, to decide whether to condone the delay.

In *Lala Mata Din vs. A. Narayanan* 1970 AIR 1953, the Hon'ble Supreme Court held that while condonation of delay is discretionary, courts should take a liberal approach in such cases.

The court emphasized that procedural delays should not prevent the delivery of justice, especially when the delay is not due to negligence or mala fide intent. The court recognized that delays might occur due to various unavoidable reasons, and technicalities should not override substantive justice.

- **Plea of limitation when not raised?**

Even if the defendant intentionally does not raise the plea of limitation and the suit is barred by law of limitation under Section 3 of the Limitation Act, 1963, court need to dismiss the same.

- **Negligence and misleading of litigant by counsel & condonation of delay:**

In the case of *Concord of India Insurance Co. Ltd. Vs. Nirmala Devi*, 1979 AIR 1666, the litigant was misled by his negligent counsel, the default in delay was condoned for the litigant to pursue his remedy.

- **Time consumed 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 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 Hon'ble 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.

- **Whether Separate application u/s 5 for condonation of delay is required :**

In the case of *Bhagmal Vs. Kunwar Lal* AIR 2010 SC 2991, the 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.

In the case of ***Sesh Nath Singh & Anr. Vs Baidyabati Sheoraphuli Co-operative Bank Ltd. And Anr.*** 2021 SCC Online SC 244, It was held that Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court within the time prescribed by limitation, there is no bar to exercise by the Court of its discretion to condone delay, in the absence of a formal application. A plain reading of Section 5 makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 would have expressly provided so. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 as of right, without making an application. It is reiterated that delay can be condoned irrespective of whether there is any formal application,

if there are sufficient materials on record disclosing sufficient cause for the delay.

The Hon'ble High Court of Delhi in the case of ***Ms Rachna Overseas vs Ms Printech System***. 2021 SCC Online Del 5332 relied upon its decision in ***M/S Ok Play India Pvt. Ltd vs M/S A P Distributors & Anr***. 2021 SCC Online Del 4043, wherein it has been held as: "Now, the question is whether a condonation application had to be filed and that too within 120 days, along with the written statement or whether the court without any application before it, could condone the delay and receive the written statement, subject to recording of its reasons and imposition of costs. This Court is of the view that since it is not for the court to furnish reasons for condoning the delay in filing the written statement, it is necessary that the defendant, when filing a belated written statement, also submits to the court an explanation for the delay, by moving an application in this regard. A written application supported by an affidavit is a must for seeking condonation of delay"

CONCLUSION

The Limitation Act primarily provides a bar upon the time within which the aggrieved party can institute a suit, application or appeal in the court of law. On the other hand, condonation of delay is a discretionary remedy exercised by courts if the party provides a sufficient cause that hindered them from filing the appeal or application on time. The concept of sufficient cause under the Limitation Act, 1963, serves as a safeguard against unjust deprivation of rights due to procedural delays. It enables courts to balance the interests of both parties while ensuring that justice is not denied on mere technicalities. However, parties seeking condonation of delay must provide cogent reasons supported by evidence to justify their plea. Ultimately, the determination of sufficient cause rests on the equitable discretion of the courts, guided by principles of fairness and justice.

Hence, it can be concluded that the remedy provided under the Limitation Act to condone the delay where a sufficient cause has been provided for the same should be construed liberally and equitably in order to meet the ends of justice. However, the court must be convinced that the delay was genuine, without any negligence and it must be condoned in favour of justice.