

ORDER ON I.A.NO.I

Instant application has been filed by the appellant/cross objector in his cross appeal U/Sec.5 of Law of Limitation Act, requesting the court to condone delay of 71 days in preferring present cross appeal.

2. In an affidavit filed in support of application, it is sworn by applicant that, appellant was suffering from severe back pain and knee pain and he was under rest. As such appellant/ cross objector could not met his counsel and instructed to file cross appeal in time. On these grounds, appellant/ cross objector has requested the court to condone the delay in filing in cross appeal and permit the appellant/ cross objector to prosecute the cross appeal.

3. The learned counsel for respondent is present and submitted I.A may be allowed on cost.

4. Heard on both side.

5. Perused the records placed before the Court.

6. The following points that arise for my consideration are as under:

1. Whether appellant/ cross objector has made out sufficient cause for condone the delay in filing cross appeal?

2. What order?

7. My findings to the above said points are as under:

Point No.1: In the Affirmative.

Point No.2: As per final order, for the following:

REASONS

8. **Point No.1**: The appellant/ cross objector is requesting the court to condone the delay of 71 days in filing appeal on the grounds that, applicant due to his ill health, who said to have been suffering from severe back pain and knee pain could not met his counsel and instructed him to file cross appeal in time. In this process there was delay of 71 days in filing cross appeal.

9. The Hon'ble Supreme Court of India in decision reported in **AIR 1962 SC 361 in case of Ramlal V/s Rewa Coalfields Limited**, wherein it is held that Section 5 of Limitation Act provided for extension of period in certain cases. It lays down inter alia that, an appeal may be admitted beyond period of limitation prescribed there for, when appellant satisfies the court that, he had sufficient cause for not preferring the appeal within such period. The section raises two questions for consideration. First one what is the sufficient cause and second what is the meaning of cause within such period. In construing Section 5 it is relevant to

bear in the mind two important considerations. First consideration is that, an expiration period of limitation prescribed for making an appeal case give rise to an right in favour of decree holder to treat the decree as binding between parties. In other words when period of limitation prescribed has expire the decree holder has obtained the benefit under law of limitation to treat decree as beyond challenge and legal right which has accrued to decree holder by lapse of time should not be light heatedly disturbed. Another consideration which cannot be ignored is that, if sufficient cause for causing delay is shown discretion is given to the court to condone the delay and admit an appeal. This discretion has been deliberately confer on the court in order of judicial power and discretion in trial should be exercised to advance substantial justice. The word sufficient cause receiving an liberal construction so as to advance substantial justice when no negligence nor inaction for want of bonafide is imputable in the appellant.

10. Further Hon'ble Supreme Court of India in decision reported in **2008 AIR SCW in case of State V/s Ahmedjan** held that, proof of sufficient cause is condition precedent for exercise of extra ordinary discretion vested in the court. What counts is not the length of delay but the sufficient say of cause

and shortness of delay is one of the circumstances to be taken into account in using such discretion. Section 5 of Limitation Act is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that, the court has to go into the position of person concerned and to find out if delay can be said to have been resorted from the cause which he had adduced and whether the cause can be recorded in peculiar circumstances of the case is sufficient.

11. In recent decision of Hon'ble Supreme Court of India reported ***in (2013) 12 SCC 649 in case of Esha Battacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others*** has broadly culled out the principles of law to be considered in the matter of condonation of delay in filing appeal. Wherein it is observed that, 1. There should be liberal pragmatic, non-pedantic approach while dealing with application for condonation for delay, for that Courts are not supposed to legalise injustice but the Court or obliged to remove injustice. 2. The terms in sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact there these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation. 3. Substantial justice being

paramount and pivotal the technical considerations should not be given undue and uncalled emphasis.

4. No presumption can be attached to deliberate causation of delay but gross negligence on the part of counsel or litigant is to be taken note of. 5. Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact. 6. It is kept to be in the 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. 7. The concept of the liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. 8. There is no distinction between in ordinate delay and a delay of short duration are 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. 9. The conduct, behaviour and attitude of 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 the parties and said principle cannot be given a total go bye in the name of liberal

approach. 10. If explanation offered is concocted or the grounds urged in application are fanciful, the Court should be vigilant not to expose the other side unnecessarily to face such a litigation. 11. It is to be born in the mind that, no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation. 12. The entire gamut of facts are to be carefully scrutinised and the approach should be based on paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. 13. The State or a public body are an entity representing a collecting caused should be given some acceptable latitude.

12. If above principles are made applicable, the applicant has specifically stated he is suffering from ill-health. With these principles if delay in filing present appeal is condoned on realistic cost imposed on appellant/ cross objector would meet ends of justice. Hence court can exercise its discretion liberally in condoning the delay in filing appeal. Hence, I answer the point No.1 in the **“Affirmative”**.

13. **Point No.2**: In view of my findings on the above said point, I proceed to pass the following:

ORDER

I.A.No.I filed by the applicant /cross objector
U/Sec.5 of Limitation Act, is hereby allowed.

Delay of 71 days in preferring cross appeal is
hereby condoned and cross appeal is admitted.

For argument.

Call on: 04.09.2020

Prl. Senior Civil Judge
Kalaburagi.