



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMP(M) No.1658 of 2024

Date of Decision: July 18, 2025

Rama Devi and othersApplicants-Appellants.
Versus
Shiri Ram General Insurance
Company Limited and others ..Non applicants-Respondents.

Coram:
The Hon’ble Mr. Justice Vivek Singh Thakur, Judge.
Whether approved for reporting?¹ Yes

For the Appellants: Ms.Tim Saran, Advocate.
For the Respondents: Nemo

Vivek Singh Thakur, J (Oral)
CMP(M) No.1658 of 2024

This application has been filed for condonation of 8 years 8 months and 14 days’ delay in filing the appeal.

2. Respondent No.1 is Insurance Company. Respondent No.2 is owner-cum-driver of the vehicle involved in accident. Respondent No.3 is mother-in-law of the appellant. Notices were issued to the respondents, but despite service they have not chosen to be represented.

3. The impugned Award proposed to be assailed in the appeal for enhancement of compensation was announced on 01.08.2015. Claim Petition was preferred by the applicants-

¹ Whether reporters of the local papers may be allowed to see the judgment?

appellants alongwith proforma respondent No.3 on account of death of husband of appellant No.1, who was father of appellants No.2 and 3 and son of proforma respondent No.3.

4. As per averments made in the application, after pronouncement of Award dated 01.08.2015, counsel representing the claimants before Motor Accident Claims Tribunal, namely Mr.Harish Sharma, Advocate, had obtained signatures of applicant No.1-appellant on blank papers with assurance that those signatures were required for release of the amount of compensation and further for filing appeal before the High Court for enhancement of compensation.

5. It is further plea of applicants-appellants that they kept on calling the Advocate and inquired about filing of appeal in the High Court as well as release of amount of compensation. Thereafter, she received first installment of compensation of ₹6,00,000/-, out of which ₹3,50,000/- she paid as fee to Mr.Harish Sharma, Advocate.

6. It has further been submitted on behalf of applicants-appellants that counsel fee was paid to the Advocate after receiving first installment of compensation in toto because counsel had told that remaining amount shall only be released if the counsel fee would be paid in advance.

7. Further that, despite making inquiries and request by applicant No.1-appellant, even during COVID-19 when she was in dire need of money for studies of her children, Advocate kept on delaying the matter with assurance that balance amount of compensation will be received by her shortly.

8. It is further case of applicants-appellants that in the year 2023 on visiting Branch of State Bank of India, where appellant No.1 had opened her account, appellant No.1 was shocked to know that an amount of ₹4,16,000/- was transmitted to her account, but was withdrawn from her account through ATM issued in her name. Thereafter, she immediately visited her counsel and apprised him about misappropriation of her amount, but the Advocate had shown his total ignorance. Thereafter, applicant No.1-appellant came to know that no appeal was ever filed by her counsel for enhancement of compensation and, in these circumstances, she apprehended that amount released in her name had been misappropriated by her counsel, who told her that no amount was released in her favour in the year 2019, but on inquiry, applicant No.1-appellant found that an amount of ₹4,16,000/- was released by the Court on the application filed by her Advocate.

9. According to applicant No.1-appellant, her Advocate, who was representing them before MACT appears to have misused her signatures for releasing the amount of compensation from the Court as well as from the Bank and also for issuing ATM in her name from the Bank.

10. After disclosure of aforesaid facts, applicant No.1-appellant has filed a complaint before Chairman, Bar Council of Himachal Pradesh through registered A.D. dated 12.12.2023, copy whereof has been placed on record alongwith postal receipt with this application.

11. It is further case of applicants-appellants that a complaint against misappropriation of amount of compensation was

also submitted to the Superintendent of Police, Shimla, on 20.11.2023 giving details of mischief and fraud played upon appellants by their Advocate.

12. It is further case of applicants-appellants that appellant No.1 had visited Police Station Sunni, for more than twice and during her visits, her statements were recorded, but thereafter nothing has been communicated to her.

13. It has further been submitted on behalf of applicants-appellants that nothing has been heard about fate of complaint submitted to the Chairman, Bar Council of Himachal Pradesh as well as Superintendent of Police, Shimla.

14. It has been submitted that in aforesaid facts and circumstances, proposed appeal has been prepared alongwith present application and has been filed in this Court in April 2024.

15. Application is duly supported by affidavit of applicant No.1-appellant. Respondents have not chosen to contest the application.

16. It has been submitted that length of delay becomes immaterial when there is sufficient cause preventing the appellants from filing the appeal. It has been further submitted that present case is a fit case for condoning the delay for doing substantial justice. To substantiate the plea, learned counsel for the appellants has placed reliance on observation made by the Apex Court cited hereinafter.

17. In *Collector, Land Acquisition, Anantnag and another versus Mst. Katiji and others, AIR 1987 SC 1353*, the Apex Court, observed as under:-.

“3.The legislature has conferred the power to condone delay by enacting Section 5 of the Indian 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 for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiable 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 realized that:

- 1.Ordinary 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.

18. A three Judge Bench of the Apex Court in the case of ***State of Haryana versus Chandra Mani and others (1996) 3 SCC 132*** has held as under:-

“7.....The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, 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. 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 resorting to delay. In fact he runs a serious risk. Judiciary is not respected 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.....”

19. In *N. Balakrishnan versus M. Krishnamurthy, (1998) 7*

SCC 123, the Apex has observed as under:-

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules 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. Law of limitation fixes a life-span for such legal remedy for the redress of the 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. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. 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 vide *Shakuntala Devi Jain Vs. Kuntal Kumari*, AIR 1969 SC 575 and *State of West Bengal Vs. Administrator, Howrah Municipality*, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

20. In *S. Ganesharaju (dead) through LRs. and another versus Narasamma (dead) through LRs. and others (2013) 11 SCC 341*, the Apex Court has made the following observations:-

“12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the Court within the prescribed period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matters on merits, meaning thereby that such technicalities have been given a go-by.

... ..

14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily.”

21. In ***Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649***, the Apex Court has laid down the following guidelines:-

- 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.

(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.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

22. A two Judge Bench of the Apex Court in the case of ***Dhiraj Singh (dead) through legal representatives and others versus State of Haryana and others (2014) 14 SCC 127*** has observed as under:-

“15.....The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations.....”

23. In ***B.S. Sheshagiri Setty and others versus State of Karnataka and others, (2016) 2 SCC 123***, the Apex Court has observed as under:-

“28. If a statute does not prescribe the time limit for exercise of revisional power, it must be exercised within a reasonable time frame. In the instant case, it is evident that constant litigation has been carried on by the appellants, and therefore they cannot be accused of suddenly waking up after 13 years to claim their land. Further, in the context of limitation, it has been held by this Court in a catena of cases that when what is at stake is justice, then a technical or pedantic approach should not be adopted by the Courts to do justice when there is miscarriage of justice caused to a public litigant.”

24. In a recent decision of a three-Judge Bench of the Apex Court in ***Brahampal vs. National Insurance Co., (2021) 6 SCC 512***, has observed as under:-

“16. At this juncture, we need to interpret the term “sufficient cause” as a condition precedent for the granting of the discretionary relief of allowing the appeal beyond the statutory limit of ninety days. Although this

Court has held that provisions of the Limitation Act, 1963 does not apply while deciding claims under the Motor Vehicles Act, but it is relevant to note that even while interpreting “sufficient cause” under the Limitation Act Courts have taken a liberal interpretation. This Court in the case of *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs*, (2008) 8 SCC 321, observed that:

“13....The words “sufficient cause for not making the application within the period of limitation” should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words “sufficient cause” in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.” (emphasis supplied)

17. The aforesaid view was reiterated in the case of *Balwant Singh (Dead) v. Jagdish Singh*, (2010) 8 SCC 685, wherein this Court held that:

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the

other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly." (emphasis supplied)

18. The Court in the abovementioned cases, highlighted upon the importance introducing the concept of "reasonableness" while giving the clause "sufficient cause" a liberal interpretation. In furtherance of the same, this Court has cautioned regarding the necessity of distinguishing cases where delay is of few days, as against the cases where the delay is inordinate as it might accrue to the prejudice of the rights of the other party. In such cases, where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the Courts have to take a strict approach so as to protect the substantial rights of the parties. 19. The aforesaid view was taken by this Court in the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157 wherein the Court held that:

"23. What needs to be emphasised is that even though a liberal and justiceoriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is

consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.” (emphasis supplied)

20. Therefore, the aforesaid provision being a beneficial legislation, must be given liberal interpretation to serve its object. Keeping in view the substantive rights of the parties, undue emphasis should not be given to technicalities. In such cases delay in filing and refiling cannot be viewed strictly, as compared to commercial claims under the Arbitration and Conciliation Act, 1996 or the Commercial Courts Act, 2015.

21. In *P. Radha Bai v. P. Ashok Kumar*, (2019) 13 SCC 445, wherein this Court while interpreting Section 34 of the Arbitration Act, held that the right to object to an award itself is substantively bound with the limitation period prescribed therein and the same cannot merely a procedural prescription. In effect the Court held that a complete petition, has to be filed within the time prescribed under Section 34 of the Arbitration Act and ‘not thereafter’. The Court while coming to the aforesaid conclusion, reasoned as under:

“36.1 First, the purpose of the Arbitration Act was to provide for a speedy dispute resolution process. The Statement of Objects and Reasons reveal that the legislative intent of enacting the Arbitration Act was to provide parties with an

efficient alternative dispute resolution system which gives litigants an expedited resolution of disputes while reducing the burden on the courts. Article 34(3) reflects this intent when it defines the commencement and concluding period for challenging an award. This Court in Popular Construction case [Union of India v. Popular Construction Co., (2001) 8 SCC 470] highlighted the importance of the fixed periods under the Arbitration Act. We may also add that the finality is a fundamental principle enshrined under the Arbitration Act and a definitive time limit for challenging an award is necessary for ensuring finality. If Section 17 were to be applied, an award can be challenged even after 120 days. This would defeat the Arbitration Act's objective of speedy resolution of disputes. The finality of award would also be in a limbo as a party can challenge an award even after the 120 day period." (emphasis supplied)

Coming back to the Motor Vehicles Act, the legislative intent is to provide appropriate compensation for the victims and to protect their substantive rights, in pursuit of the same, the interpretation should not be as strict as commercial claims as elucidated above.

22. Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties.

When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief.””

25. Though there is considerable extraordinary inordinate delay in preferring the appeal, however, for the circumstances narrated in the application, duly supported by affidavit of applicant No.1-appellant, documents filed therewith which have been chosen by respondents not to be contested, submissions made by learned counsel for applicants as well as ratio of pronouncements of the Apex Court preponderance of probability is in favour of plea of applicant No.1-appellant, indicating that there is sufficient cause which prevented her from filing the appeal for considerable long period.

26. Before disposing of the application, for peculiar facts and circumstances, I am constrained to direct the Chairman, Bar Council of Himachal Pradesh as well as Superintendent of Police, Shimla, to look into the matter personally and ensure to take complaint/application to its logical end, in accordance with law, in a time bound manner and to communicate the action taken on the complaint to applicant No.1-appellant immediately as well as to this Court through Registrar (Judicial) well before next date of hearing.

27. In view of above discussion, delay in filing the appeal is condoned with aforesaid directions.

28. Registry is directed to transmit copy(ies) of this order to the Chairman, Bar Council of Himachal Pradesh and Superintendent of Police, Shimla, for necessary action on their part.

29. Application is allowed and disposed of.

FAO No. _____ of 2025 (FAOST/11710/2024)

Appeal be registered.

Notice to respondents, returnable on next date of hearing, on taking steps within a week, be issued.

Records be requisitioned.

List for further orders on 10.09.2025.

(Vivek Singh Thakur),
Judge.

July 18, 2025
(Purohit)