



2025:DHC:6025-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.07.2025

+ **RFA 149/1991**

BHAGWANA

.....Appellant

Through: Mr. Pawan Kumar Bahl & Ms.
Prakhya Bahl, Advs.

versus

UOI

.....Respondent

Through: Mr. Sanjay Kumar Pathak,
Standing Counsel with Mr.
K.K. Kiran Pathak, Mr. Sunil
Kumar Jha, Mr. Mohd. Sueb
Akhtar & Mr. Divakar Kapil,
Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

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JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

CM APPL. 51925/2023 (Delay of 9652 days in filing restoration application)

1. The present application, under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908, has been filed seeking a condonation of delay of 9652 days in filing an application for restoration of the appeal.

2. The said appeal, filed by the Appellant, was dismissed for non-prosecution *vide* Order dated 03.03.1997. Thereafter, in 2023, the Applicants filed an application seeking restoration of the said appeal,



along with the present application, which is the subject matter of the present adjudication.

3. The original appeal was filed by late Shri Bhagwana/original Appellant, who died on 29.05.1992, during the pendency of the proceedings. Pursuant to his demise, an application was filed for bringing his widow, Smt. Kala Wati, on record as his legal representative. However, the said application was also dismissed in default.

4. While filing the present application seeking condonation of delay, the Applicants have taken the following grounds:

“9. That the counsel for the appellant who had filed the appeal namely Shri S L Malhotra was an old man and having retired from government service and since his old age was having various ailments and it looks did not appear before the court to pursue the matter and thus the application was dismissed for non-prosecution and subsequently appeal was order to having abated.

10. That Applicant was not aware of the dismissal of the application and appeal and since she was not keeping well and nor her legal heirs were aware of the fact of the appeal being pending.

11. That the applicant submit that Applicant Kala Wati wife of the appellant was not keeping well and unfortunately died on 21.3.2007.

12. That the applicant came to know about the filing of the appeal in March/April 2016 from seeing some old papers and then tried to contact the advocate who had filed the appeal.

13. That the applicant came to know from the Bar association and other persons and were able to contact the old clerk of Mr S L Malhotra and who then informed them that learned Counsel Shri S L Malhotra has since died.

14. That the applicant with the help of the clerk of the counsel traced out the number of the appeal and obtained the copies of the proceedings from the court.

15. That the applicant then came to know that the appeal stood dismissed being abated.

16. That since the applicant i.e. wife of the appellant had died and now there are three sons of the appellant namely



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- I) Ram Phal
- II) Ram Kumar
- III) Rohtas

Unfortunately all the above sons have since died. Besides this the appellant had three daughters namely

- I) Smt.Rama
- II) Smt.Santra
- III) Smt.Kanta

And as per Will dated 9.4.91 appellant Bhagwana had not given any right to the daughters and had only given right to her wife. Copy of the will is already on record along with application.

That wife has not left behind any will.

17. That the applicant is wife and sons and daughter of one of the sons namely Late Shri Ramphal and had tried to contact the other legal heirs i.e. legal heirs of Ram Kumar and Rohtas and none of them are willing to contribute the legal expenses and applicant continued to try them to contribute and ultimately the Legal heirs of the Late Ram phal are filing the present application and seeks restoration of the appeal. The applicants are the only legal heirs of the deceased appellant.

18. That the applicant submit that the applicant has come to know that the appeal filed arising out the. Same award were heard and compensation was enhanced vide judgment dated 3.2.95.”

5. We have heard the learned counsel representing the parties at length.

6. Learned counsel on behalf of the Applicants has made the following two submissions:

- (i) The parties are uneducated and rustic villagers.
- (ii) They were unaware of the remedy available to them.

7. Learned counsel for the Applicants has also relied upon the judgment passed by the Hon’ble Supreme Court in ***Tukaram Kana Joshi v. MIDC¹***.

8. *Per contra*, learned counsel for the Respondent has relied upon a recent judgment of the Hon’ble Supreme Court in ***Pathapati Subba***



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Reddy (Died) By L.Rs. and Others v Special Deputy Collector (LA)².

9. This Court has compassionately considered the case of the Applicants. Undoubtedly, the predecessor of the Applicants was the owner of the land, which was acquired by the Government in accordance with the provisions of the Land Acquisition Act, 1894³. The application filed by the original Appellant under Section 18 of the Act before the reference court was allowed, and the market value assessed by the Collector was revised. Further, the Appellant filed the captioned appeal, on which notice was issued, but it was dismissed in default in the year 1997.

10. Learned counsel on behalf of the Applicants admits that a batch of approximately 100 appeals was filed before this Court seeking enhancement/ revision of the market value assessed by the reference court. All the appeals filed by the co-villagers came to be decided on merits on 03.02.1995.

11. Consequently, cross appeals were filed before the Hon'ble Supreme Court by the landowners as well as Union of India, which came to be dismissed sometime in the year 1997-1998. Thereafter, the enhanced compensation was disbursed to the co-villagers within a period of 1-2 years.

12. A careful reading of the application indicates that after the death of Sh. Bhagwana, an application to bring on record his wife, Smt. Kala Wati, as LR was filed. However, Smt. Kala Wati died on 21.03.2007. She was survived by three sons and three daughters. All her sons also passed away. Heirs of one of the sons have chosen to file

¹ (2013) 1 SCC 353.

² 2024 SCC OnLine SC 513

³ Act



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the present application in the year 2023.

13. While seeking condonation of delay, the Applicants were required to furnish sufficient/cogent reasons for the said delay. In the present case, the delay is colossal. There is absolutely no justification for the same. It is to note that the Appellant, as well as his deceased wife, was duly represented by their respective counsels.

14. In para 18 of the present application, it has been stated that the Applicants came to know that the appeals were heard and compensation was enhanced *vide* Judgment dated 03.02.1995.

15. At this stage, learned counsel representing the Applicants draws the attention of this Court to Para 12, which has already been reproduced. A perusal of para 12 would make it evident that the Applicants had known about the filing of the appeal in March/April, 2016. However, the present application was filed in the year 2023.

16. The Hon'ble Supreme Court in a recent judgment of ***Pathapati Subha Reddy (supra)*** in para 26 has laid down the following test that has to be taken into consideration before condoning the delay, which is extracted as under:

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

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) 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;

(iv) 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;

(v) 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;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

17. The Apex Court also notes that the delay cannot be condoned simply on the ground of parity, equity, sympathy and compassion.

18. Keeping in view the aforesaid discussions, this Court is left with no choice but to dismiss the present application for condonation of delay in filing the application for restoration of the appeal.

19. Accordingly, the present application is dismissed in the aforesaid terms.

CM APPL. 51924/2023 (CM for restoration) & CM APPL. 51926/2023 (Impleadment)

20. Consequently, in view of the foregoing, these applications shall stand dismissed as infructuous.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
JULY 23, 2025/v/va/ia