IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No. 180 of 2002

1.(a) Pushpa Dave @ Devi
1.(b) Jay Rajgarhia
1.(c) Vijay Kumar Rajgarhia
1.(d) Pankaj Kr. Rajgarhia
1.(e)Bharti Seksaria

…… Appellants

Versus

1. Sri Udai Kumar Rajgarhia
2. Sri Akash Kumar Rajgarhia
3. Sri Bikram Rajgarhia
4. Sri Pradip Kumar Rajgarhia
5. Sri Shyam Sundar Rajgarhia
6. Sri Balmukund Rajgarhia
7.(a)Krishna Devi Kedia
7 (b)Shakuntala Devi Agarwal …… Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants : Mr. Sanjay Kumar Tiwari, Advocate
Mr. Mihir Kunal Ekka, Advocate
Mr. Deepankar, Advocate
For the Respondents : Mr. A.K. Sahani, Advocate

43/Dated: 25/01/2023

Heard Mr. Sanjay Kumar Tiwari, learned counsel for the appellants and A.K. Sahani, learned counsel for the respondents.

2. This second appeal has been filed being aggrieved and dissatisfied with order dated 10.07.2002 passed by the learned District Judge, Dhanbad in Title Appeal No. 72 of 2001 which was preferred against the judgment and decree dated 31.07.1997 passed in Title Suit No. 17 of 1988.

3. The Title Suit No. 17 of 1988 was instituted by the respondents/plaintiffs against the appellants for declaration of their right over the suit property and for confirmation of possession of finding that deed of cancellation dated 02.06.1988 made by the defendants nos. 1 to 6 is illegal and inoperative and is not binding on the plaintiffs and for permanent injunction on the ground that on the basis of deed of gift dated 07.01.1985 executed by defendant no.1 the plaintiffs have acquired a valid right, title and possession. The said suit was decreed in favour of the respondents/plaintiffs. Aggrieved with that first appeal was filed which was dismissed by the learned appellate court vide judgment dated 10.07.2002.

4. The case of the plaintiffs/respondents in plaint is that the suit property

previously belonged to the defendants in permanent transferable right plaintiffs are nephew of defendents no. 1 to 4 while defendant no. 1 was in possession by a registered deed of gift dated 7.1.1985 gave away the property to plaintiffs. At the time of gift plaintiffs were minors as such gift was accepted on their behalf by their father. Further case of the plaintiffs is that there was old structure over the suit property which was demolished by the plaintiffs and plaintiffs have constructed a market complex named "Rajgaria Shopping and Residential Complex" and six tenants had been inducted.

It is further case of the plaintiffs that when the shopping complex was completed the defendant no.1 to 6 used to work as an accountant in the business of the father of the plaintiffs. But the defendant no. 1 to 6 since the month of June, 1988 out of sheer greed in order to grab the suit properties started raising claim in the gifted property and the defendants no. 1 to 6 executed a deed of cancellation on 2.6.1988 in respect of the deed of gift dated 7.1.1985. The said deed of cancellation contains false frivolous and baseless allegation.

It is further case of the plaintiffs that on 7th July 1988 defendants No. 1 to 6 illegally, wrongfully and forcefully broken and opened the rooms of said complex which were set to be let out to tenants.

It is further case that defendant nos. 1 to 6 is realizing rent from tenants on the under standing that they are real owner of the property.

It is further case of the plaintiffs that defendant nos.1 to 6 are residing in the first floor of the said market complex on the permission of the father of the plaintiffs. It is further stated that defendants no. 1 to 6 showing some affidavits of the father of the plaintiffs wherein it has been alleged that suit property was held by the plaintiffs as were benamidar of the defendant no. 1 to 6 these documents are manufactured by defendant nos. 1 to 6 taking advantage of signature of the father of the plaintiffs over some blank papers.

Lastly it has been pleaded that Umashanker the father of the plaintiffs practically saved the defendant no.1 from starvation by giving him employment in his business and out of gratitude defendant no. 1 executed a deed of right dated 7.1.1985

in the hand of plaintiffs.

5. The case of defendants is that the defendants have contested the suit and stated that the suit in the present form is not maintainable plaintiffs have no locustandi to institute the present suit. The suit is bad and barred under specific relief act, Indian Contract Act, Limitation Act and under the principle of waiver, acquiescent and estoppel.

It is further case of the defendants that so far love and affection as alleged in plaint by defendants towards the plaintiffs is false and denied. It was further contended that in the suit premises one Kailash Chandra Sharma is tenants and the defendants were in want of said premises in occupation of Kailash Chandra Sharma. It is further case of the defendants that all the defendants and father of the plaintiffs held a consultation in which it has been decided that defendant no.1 will execute a deed of gift in the name of the plaintiffs and there after to institute a suit for eviction of Shri Kailash Chandra Sharma on the ground of personal benefits. There was no intention in any manner or this defendants to transfer the right, title and interest in favour of the plaintiffs. The so called deed of gift as alleged is merely a benami. The plaintiffs never possessed for same. It is also false to say that present market complex was constructed by the plaintiffs. Father of the plaintiffs never inducted any tenants. The entire marked complex have been inducted on rent by defendant no.1 and who is realizing rent.

It is further case of the defendants that after executing deed of gift dated 7.1.1985 plaintiffs filed eviction suit no. 13 of 85 against said Kailash Chandra Sharma which was ultimately compromised. As the purpose of deed of gift was compromised and so the defendants no. 1 asked the father of the plaintiffs to re-convey the suit property in favour of the defendants. But it was avoided by him on pretext of good relationship and ultimately father of the plaintiffs refused to re-convey/re-transfer the property. Thereafter defendant no.1 filed Title Suit No. 28 of 1988 for re-conveyance. But father of the plaintiffs in order to settle the matter out side the court and sworn the affidavits in favour of the defendants no. 1 regarding the

property involved in the said title suit no. 28 of 88 to the effect that deed of gift as alleged dated 7.1.1985 is benami of plaintiff of T.S. 28/88 i.e. present defendant noi. 1 and on that circumstances the said Title Suit No. 28 of 88 was withdrawn.

The defendants have denied all other allegation in plaint and stated that suit property is absolute property of only defendant no. 1 and all the allegation denied.

6. This second appeal was admitted on 09.11.2004 on following substantial question of law:-" Whether the learned lower appellate court while passing the impugned order/judgment has erroneously proceeded on extraneous consideration and wrongly disposing of the appeal on the said ground".

7. Mr. Sanjay Kumar Tiwari, learned counsel for the appellants submits that learned appellate court dismissed the said appeal on the ground that after 1572 days, appeal has been filed and sufficient cause has not been shown for condoning the delay and dismissed the appeal on the ground of delay. He further submits that bonafide and sufficient cause of the appellant has not been considered by the learned appellate court. He further submits that decree of the trial court was passed ex parte that is why the appellant herein filed Misc. Case No. 1/1997 under Order 9 Order 13 read with 151 C.P.C. which was dismissed on 14.11.1997 as not maintainable. He further submits that against that order the appellant preferred Misc. Appeal No. 72 of 1997 which was dismissed by the learned 2nd Additional District Judge, Dhanbad vide judgement dated 19.08.1998 and against the said order Civil Revision No. 423 of 1998 (R) was filed before the Hon'ble High Court which was dismissed by order dated 16.07.2001 and against that the appellant moved before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 19184/2001 which was dismissed by order dated 23.11.2001. He further submits that since the decree in the original court was passed ex parte that is why the petition under Order 9 Rule 13 was filed which was contested in every manner however that petition has been dismissed and thereafter the appeal has been filed as Title Appeal No. 72 of 2001 on 20.12.2001. He further submits that all these facts were disclosed before the learned appellate court inspite of that the learned appellate court has not condoned the delay of 1572 days and has dismissed

the appeal which is against the mandate of law.

8. According to him if bonafide and sufficient cause is made out learned court was required to condone the delay and decide the appeal on merit. To buttress his argument, he relied in the case of **" *Bhivchandra Shankar More V. Balu Gangaram More & Others" (2019) 6 SCC 387*** wherein para 15, 18 & 20) the Hon'ble Supreme Court has held as under:-

> *"**15.** It is a fairly well-settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri [B. Madhuri Goud v. B. Damodar Reddy, (2012) 12 SCC 693 : (2013) 2 SCC (Civ) 546] , this Court held as under: (SCC p. 696, para 6)*
> *"6. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay."*
> ***18.** In the case in hand, Respondents 1 to 13 filed a suit for partition in the year 2007, which was decreed ex parte on 4-7-2008. The appellant and Respondents 14 and 15 filed application under Order 9 Rule 13 CPC and the same came to be dismissed on 6-8-2010. Being aggrieved by dismissal of application under Order 9 Rule 13 CPC, the appellant and Respondents 14 and 15 preferred an appeal under Order 43 Rule 1(d) CPC on 3-9-2010. Of course, the said appeal was pending for about three years and the same was withdrawn on 11-6-2013. Thereafter, on the next day i.e. on 12-6-2013, the appellant and Respondents 14 and 15 filed an appeal challenging the ex parte decree and judgment dated 4-7-2008 passed in Regular Civil Suit No. 35 of 2007. It cannot be said that the appellant and Respondents 14 and 15 were grossly negligent in pursuing the matter more so, when the decree was passed in the suit for partition.*
> ***20.** In the facts and circumstances of the present case, the time spent in pursuing the application under Order 9 Rule 13 CPC is to be taken as "sufficient cause" for condoning the delay in filing the first appeal. The impugned judgment [Balu Gangaram More v. Bhivchandra Shankar More, 2014 SCC OnLine Bom 1199 : (2015) 2 Mah LJ 879] of the High Court cannot be sustained and is liable to be set aside."*

9. Relying on the said judgment, he submits that this case was under Order 9 Rule 13 C.P.C and considering the bonafide the Hon'ble Supreme Court has interfered and set aside the judgment of the High Court considering that order 9 Rule 13 petition was moved which was dismissed and benefit of that was required to provide to the appellant. He further submits that same ratio has been relied in the case of . "***J. Kumardasan Nair & Another Vs. Iric Sohan & Others 2009 12 SCC 175*** wherein para 15 and 16 the Hon'ble Supreme Court has held as under:-

> ***"15.** The question which arises for consideration is as to whether only because a mistake has been committed by or on behalf of the appellants in approaching the appropriate forum for ventilating their grievances, the same would mean that the provision of sub-section (2) of Section 14 of the Limitation Act, which is otherwise available, should not be taken into consideration at all. The answer to the said question must be rendered in the negative.*
> ***16.** The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake. The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broadbased manner. When sub-section (2) of Section 14 of the Limitation Act per*

se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature."

10. He submits that this second appeal has been admitted on the substantial question of law and the said substantial question of law is required to be answered in favour of the appellant and the appeal may be restored to be decided on merits.

11. On the other hand, Mr. A.K. Sahani, learned counsel for the respondents submits that the respondent nos. 4 and 5 have already died which has been accepted by the learned counsel for the appellants. Learned counsel for the appellants fairly accepted that respondent no. 4 died on 24.12.2021 and respondent no. 5 died on 11.03.2020. Mr. Sahani, further submits that no substitution petition has been filed and thus this second appeal has already abated against respondent nos. 4 and 5. He further submits that Order 9 Rule 13 petition was filed on the ground that decree was passed ex parte and the learned courts in the proceeding initiated by the appellants under Order 9 Rule 13 concurrently held upto to the Hon'ble Supreme Court that proceeding was not ex parte. He submits that there is no bonafide intention and sufficient cause has not been made out and in that view of the matter learned appellate court has rightly rejected the appeal on the ground of limitation. He further submits that under the statute in the provision limitation is made strict is required to be adhered to. He relied in the case of ***"Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Limited (2022) SCCR 930, (para 16 and 17).***

12. Relying on said judgment, Mr. Sahani, submits that due diligent bonafide sufficient cause has not been made out by the appellant before the learned appellate court and the learned appellate court has rightly dismissed the appeal on the ground of limitation. He further relied in the case of ***"Ramji Pandey & Ors. V. Swaran Kali arising out of SLP (C) No. 30266 of 2008 (para 12).*** On these grounds he submits that this second appeal is fit to be dismissed.

13. In view of above submission of the learned counsel for the parties , the Court has gone through the judgment of the learned trial court as well as the appellate court and finds that the suit was decreed in favour of the respondents/plaintiffs by the judgment dated 31.07.1997. Admittedly, in the said suit

the defendants have appeared and filed their written statement and defendant nos. 2 to 6 adopted the written statement filed by the defendant no. 1. In the judgment of the learned trial court it has been recorded that the defendants have also examined one witness namely, Purosottam Das Rajgaria who is himself defendant no. 1. The defendant himself could not turned up before the court for his full examination-in-chief and his cross-examination. In the judgment of the learned trial court it has come that defendant no.1 in para 5 of the written statement has admitted that in fact the deed of gift was executed on 07.02.1985 by the defendant in favour of the plaintiffs by way of benami documents and the learned trial court has considered the certified copy of ordersheet of H.R. C. Case No. 5/85 dated 20.06.1985. The defendant no. 1-Purosottam Das Rajgaria in para 6 has clearly stated that petitioner (Purosottam Das Rajgaria) is not landlord of tenanted premises as the suit premises has been assigned by gift deed of 07.01.1985. Thus from the own written statement of defendant no. 1 (Purosottam Das Rajgaria) it was crystal clear that deed of gift dated 07.01.1985 was acted upon which was not the same transaction. Admittedly, the appellant herein has appeared in the said case and contested. There was no occasion to file petition under Order 9 Rule 13 C.P.C. The suit was contested by the appellants.

14. Admittedly, Order 9 Rule 13 petition was subject matter in Misc. Case No. 1/1997 which was dismissed on 14.11.1997 as not maintainable, in Misc. Appeal No. 72 of 1997 which was dismissed vide judgement dated 19.08.1998, in Civil Revision No. 423 of 1998 (R) which was dismissed by order dated 16.07.2001 and before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 19184/2001 which was dismissed on 23.11.2001 and after dismissal of the said SLP, Title Appeal was filed.

15. Admittedly, respondent nos. 4 and 5 have left for their heavenly abode which has been recorded here-in-above. Order 22 Rule 11 of the CPC read with Order 22, Rule 4 makes it obligatory to seek substitution of the heirs and legal representatives of deceased respondent if the right to sue survives. Such substitution has to be sought within the time prescribed by law of limitation. If no such substitution is sought, the appeal will abate. Sub-rule (2) of Rule 9 of Order 22 enables the party who is under an obligation to seek substitution to apply for an order

to set aside the abatement and if it is proved that he was prevented by any sufficient cause from continuing the suit which would include an appeal, the court shall set aside the abatement. Now where an application for setting aside an abatement is made but the court having not been satisfied that the party seeking setting aside of abatement was prevented by sufficient cause from continuing the appeal, the court may decline to set aside the abatement. Then the net result would be that the appeal would stand disposed of as having abated. It may be mentioned that no specific order for abatement of a proceeding under one or the other provision of Order 22 is envisaged; the abatement takes place on its own force by passage of time.

16. Admittedly, in the case in hand two respondents have left for their heavenly abode for which no petition for substitution petition has been filed and in this view of the matter, the second appeal is already abated with regard to respondent nos. 4 and 5.

17. There is no dispute about the fact that generally the lis is not to be rejected on the technical ground of limitation but certainly if the filing of appeal suffers from inordinate delay, then the duty of the Court to consider the application to condone the delay before entering into the merit of the lis.

18. It requires to refer herein that the Law of limitation is enshrined in the legal maxim interest reipublicae ut sit finis litium (it is for the public good that there be an ends of litigation).Therefore, it is well settled that Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time, as has been held in the judgment rendered by the Hon"ble Apex Court in ***Brijesh Kumar & Ors. Vrs. State of Haryana & Ors., (2014) 11 SCC 351. The Privy Council in General Accident Fire and Life Assurance Corpn. Ltd. v. Janmahomed Abdul Rahim, (1939-40) 67 IA 416***, relied upon the writings of Mr. Mitra in Tagore Law Lecturers, 1932, wherein, it has been said that:

> "A Law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on equitable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by law."

19. While considering the similar issue the Hon'ble Supreme Court in the

case of "***Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649,*** has held as under:

> "*21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
> *21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
> *21.9. (ix) the conduct, behavior 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.*
> *22.4. (d) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."*

20. It is settled position of Law that when a litigant does not act with bona fide motive and at the same time, due to inaction and laches on its part, the period of limitation for filing the appeal expires, such lack of bona fide and gross inaction and negligence are the vital factors which should be taken into consideration while considering the question of condonation of delay.

21. Admittedly, in the case in hand, inspite of appearance in the suit and contesting the case, a petition under Order 9 Rule 13 C.P.C. was preferred in the form of Misc. case which has been dealt with hereinabove which suggests that only to delay the matter the appellant contested the said petition upto the Hon'ble Supreme Court.

22. This is not a case that once a petition was filed and it was held by one of the court that it was not ex parte decree the appellant stop there and they have chosen to file appeal, however they went upto the Hon'ble Supreme Court thereafter they filed the petition for which sufficient cause of bonafide have not been demonstrated by the appellants. Sufficient cause was considered by the Hon'ble Supreme Court in the case of ***Ramlal, Motilal and Chhotelal Vrs. Rewa Coalfields Ltd., (1962) 2 SCR 762***, wherein it has been held that merely because sufficient cause has been made out in the facts of the given case, there is no right to the appellant to have delay condoned. At paragraph-12, it has been held as hereunder:-

> "*12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all*

relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14. In the present case there is no difficulty in holding that the discretion should be exercised in favour of the appellant because apart from the general criticism made against the appellant's lack of diligence during the period of limitation no other fact had been adduced against it. Indeed, as we have already pointed out, the learned Judicial Commissioner rejected the appellant's application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed, and that, in our opinion, is not a valid ground"

23. What is the meaning of "sufficient cause" has been considered in the case of "***Basawaraj & Anr. Vrs. Spl. Land Acquisition Officer, [(2013) 14 SCC 81]*** wherein paragraphs 9 to 15 the Hon'ble Supreme Court has held as under:-

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices - 12 - to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. 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". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] , Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

10. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it

> *is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*
> *13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*
> *"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence." An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) - 14 - SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907]*
> *14. In P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .*
> *15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*

24. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale in this regard reference may be made to Halsbury's Laws of England, Vol. 28, p. 266:

> *"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."*

25. Looking into these parameters, it is evident that the 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 deliberately" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the

Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover the ulterior purpose as has been held by the Hon'ble Supreme Court in the case of ***"Manindra Land and Building Corporation Ltd. Vrs. Bhutnath Banerjee & Ors., AIR 1964 SC 1336, Lala Matadin Vrs. A. Narayanan, (1969) 2 SCC 770, Parimal Vrs. Veena @ Bharti, (2011) 3 SCC 545 and Maniben Devraj Shah Vrs. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157***.

26. The Hon'ble Supreme in the aforesaid judgment has held that the expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

27. The judgment relied by Mr. Tiwari in the case of ***Bhivchandra Shankar More (surpa) ,*** the fact of that case is different footing. In that case appearance was not made in the proceeding Order 9 Rule 13 C.P.C. petition was filed for setting aside the case ex parte decree which was withdrawn immediately thereafter appeal was immediately filed by the appellant in that case and in that scenario the Hon'ble Supreme Court has directed to condone the delay as bonafide has been shown and in that case immediately withdrawn the case and filed appeal. The appellants herein have contested the application under Order 9 Rule 13 is already dealt hereinabove. This judgment is not helping the appellants.

28. In the case of ***"Pundlik Jalam Patil V. Executive Engineer, Jalgaon Medium Project, (2008) 14 SCC 448*** it was observed that the laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates

insecurity and uncertainty' some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

29. The law point is answered in above terms. There is no illegality in the order of the appellate court. Accordingly, this second appeal is dismissed.

30. Let L.C.R. be transmitted to the concerned court forthwith.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/