

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

RP NO. 497 OF 2015

AGAINST THE JUDGMENT DTD.16.7.2014 IN RSA 646/2009 OF
THIS COURT

REVIEW PETITIONERS/APPELLANTS IN RSA NO.646 of 2009:

1 SATHY M.P., AGED 60 YEARS,

2 M.P. BABY, AGED 58 YEARS,

(REVIEW PETITIONERS 1 AND 2 ARE REPRESENTED BY
SRI.N.C.PURUSHAN, POWER OF ATTORNEY HOLDER AND
PARTY IN PERSON)

BY ADVS.C.K.JAYAKUMAR
E.SHEENA

RESPONDENTS/RESPONDENTS IN RSA NO.646 OF 2009:

1 SARASA, AGED 63 YEARS,

2 BABY, AGED 33 YEARS,

3 **AMBILY, AGED 31 YEARS,**

4 **VIMALA, AGED 54 YEARS,**

**BY ADVS. SRI. R. MURALEEKRISHNAN
SRI. SANIL KUNJACHAN
T. M. RESHMI
ARTHUR B. GEORGE
SRI. P. M. MUJEEB REHIMAN
R4 SRI. DINESH R. SHENOY
SRI. HARIKRISHNAN G.
SRI. UNNIKRISHNAN. V. V.
SRI. MAHESH MENON
SMT. M. M. JASMIN
SMT. K. S. SUMITHA
APARNA V. S.**

**THIS REVIEW PETITION HAVING COME UP FOR ORDERS ON
06.11.2023, ALONG WITH RP.498/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

R.P.Nos.497 & 498 of 2015 &
C.M.Appl.Nos.409 & 410 of 2015

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

RP NO. 498 OF 2015

AGAINST THE JUDGMENT DTD.16.7.2014 IN RSA 1038/2009 OF THIS
COURT

REVIEW PETITIONERS/APPELLANTS IN THE RSA:

1 SATHY M.P. , AGED 60 YEARS ,

2 M.P. BABY, AGED 58 YEARS ,

BY ADVS.C.K.JAYAKUMAR
E.SHEENA

RESPONDENTS/RESPONDENTS IN THE RSA:

1 SARASA, AGED 63 YEARS ,

2 **BABY, AGED 33 YEARS,**

3 **AMBILY, AGED 31 YEARS,**

4 **VIMALA, AGED 54 YEARS,**

**ADDL.5 THE BRANCH MANAGER,
 ERNAKULAM DISTRICT CO-OPERATIVE BANK,
 KUZHUPPILLY BRANCH.**

**(IMPLEADED AS PER ORDER DATED 15.2.2016 IN
I.A.NO.3359/2015 IN R.P.498/2015)**

**BY ADVS.SRI.R.MURALEEKRISHNAN
SRI.SANIL KUNJACHAN
T.M.RESHMI
ARTHUR B.GEORGE
SRI.P.M.MUJEEB REHIMAN
R4 SRI.DINESH R.SHENOY
SRI.HARIKRISHNAN G.
SRI.UNNIKRISHNAN.V.V.
SRI.MAHESH MENON
SMT.M.M.JASMIN
SMT.K.S.SUMITHA
APARNA V.S.**

**THIS REVIEW PETITION HAVING COME UP FOR ORDERS ON
06.11.2023, ALONG WITH RP.497/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:**

K.BABU, J.

R.P.No.497 of 2015 in R.S.A.No.646 of 2009,
R.P.No.498 of 2015 in R.S.A.No.1038 of 2009,
C.M.Appl.No.409 of 2015 in R.P.No.497 of 2015,
&
C.M.Appl.No.410 of 2015 in R.P.No.498 of 2015

Dated 6th November, 2023

ORDER

C.M.Appl.Nos.409 & 410 of 2015

The petitioners seek to condone the delay of 288 days in filing review petitions challenging the common judgment in R.S.A.Nos.646 & 1038 of 2009 in these applications. The review petitioners are represented by their power of attorney holder. On 16.7.2014, by way of a common judgment this Court dismissed R.S.A.Nos.646 & 1038 of 2009.

2. The review petitioners pleaded the following:-

The review petitioners/appellants filed an application for certified copy of the judgment on 16.7.2014 itself. The certified copy was issued on 25.7.2014. Thereafter, the Registry required the appellants to surrender the certified copy of the judgment for some rectification. The

appellants surrendered the certified copy of the judgment. They obtained the judgment only after three months. The Power of attorney holder of the review petitioners is a chronic asthma patient. He has been undergoing continuous treatment for asthma. The reason for the delay in filing the review petitions was severe asthmatic problems and related diseases to the power of attorney holder since 2014 onwards. The rectified judgment was issued to the review petitioners only on 9.10.2014. As the power of attorney holder was suffering from asthmatic complaints he could file the review petitions only on 31.5.2015. He has been under the medical treatment of his elder daughter Dr.Sandhya at his residence. There were no laches or intentional default on the part of the power of attorney holder in filing the review petitions.

3. The contesting respondent/respondent No.4 resisted the application stating the following:-

The Regular Second Appeals and the Review Petitions have been filed at the instance of the Power of Attorney Holder, who is using the review petitioners as a tool against the respondents. The reason stated for the delay is the difficulties caused to the power of attorney holder and not to the petitioners/review petitioners. The delay has not been

properly explained.

4. The questions that arise for consideration are (i) whether the petitioners have established sufficient cause for not preferring the review petitions within the statutory period; (ii) if sufficient cause is shown, have the petitioners established the ground for the exercise of the discretion in condoning the delay.

5. It is apposite to extract Section 5 of the Limitation Act, 1963, which reads thus:-

“5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period 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.

Explanation.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

The expression “sufficient cause” contained in Section 5 of the Limitation Act is elastic enough to yield different results depending upon the circumstances of the case. The criteria to be applied in condoning the delay in different claims may be different. For example, in the case of beneficial legislations a liberal interpretation must be given to the expression “sufficient cause” to serve its object. The concept of

reasonableness demands that the courts, while taking a liberal approach, must also consider the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence of the other, the Court shall refrain from exercising the discretionary relief. 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 mandates so. The Court has no power to extend the period of limitation on equitable grounds.

6. 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. (Vide: **Basawaraj and Another v. Special Land Acquisition Officer [(2013) 14 SCC 81]**)

7. In *Halsbury's Laws of England (Fourth Edition, Vol. 28, p. 407)* the learned author comments thus:

"805. *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."

8. 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) 7 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]). (Vide: **Basawaraj and Another v. Special Land Acquisition Officer [(2013) 14 SCC 81]**).

9. In **P.Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830]**, the Supreme 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].

10. 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], *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201]) and *Basawaraj and Another v. Special Land Acquisition Officer* [(2013) 14 SCC 81]).

11. In **Basawaraj** (supra), the Supreme Court held that '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. The Supreme Court further held that 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, the Supreme Court added.

12. In **Basawaraj**, the Supreme Court summarised the law on the issue in the following way:-

"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."

13. In **Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361]**, the Supreme Court observed thus:-

"In construing Section 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 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 light-heartedly 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. As has been observed by the Madras High Court in *Krishna v. Chathappan* [(1890) ILR 13 Mad 269] "Section 5 gives the court a discretion which in respect of 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 words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

14. 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. (Vide: **Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project [(2008) 17 SCC 448]**).

15. It is important to note that even after sufficient cause has been shown a party may not be entitled to the condonation of delay 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. When sufficient cause is established the application for condonation of delay has to be dismissed on that ground alone. However, if sufficient cause is shown, then the Court has to enquire whether in its discretion it should condone the delay. In such circumstances, the Court considers all relevant facts especially diligence of the parties or its bona fides. However, the scope of 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. The Court is not expected to enquire into why the party was sitting idle by all the time available to it. (Vide: **Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361]**).

16. I shall consider the facts of the present case on the touchstone of the principles discussed above. The review petitions have been filed by the power of attorney holder of the petitioners. No materials have been placed before the Court to show that the review petitioners had any inconvenience or difficulty in prosecuting the matter. The power of attorney holder of the review petitioners pleaded that he was suffering from asthmatic complaints. No materials have been produced to explain the delay of 288 days in preferring the review

petitions. The claim of the review petitioners lacks bona fides. Adequate and enough reasons have not been placed before the Court to condone the delay. The present litigation had commenced in the year 2004. It is not in dispute that the review petitioners were well aware or conversant with the issues involved and the prescribed period of limitation for taking up the matter if they bona fide wanted. The C.M.Appls. lack merit and accordingly, they are dismissed.

R.P.Nos.497 & 498 of 2015

Consequent to the dismissal of C.M.Appl.Nos.409 & 410 of 2015, the Review Petitions are dismissed as barred by limitation.

Sd/-
K.BABU
Judge

TKS

R.P.Nos.497 & 498 of 2015 &
C.M.Appl.Nos.409 & 410 of 2015

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REVIEW PETITIONERS' ANNEXURES IN R.P.497/2015:

ANNEXURE A1: THE PHOTOSTAT COPY OF MEDICAL CERTIFICATE DATED
15.01.2015.

R.P.Nos.497 & 498 of 2015 &
C.M.Appl.Nos.409 & 410 of 2015

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REVIEW PETITIONERS' ANNEXURES IN R.P.498/2015:

ANNEXURE A1: THE PHOTOSTAT COPY OF MEDICAL CERTIFICATE DATED
15.01.2015.

TKS