सत्यमेव जयते

न्यायालय

सहायक कलक्टर/उपखण्ड अधिकारी

गुढामालानी–बाड़मेर

(पीठासीन अधिकारी —केशव कुमार मीना आर.ए.एस.)

वाद संख्याः— 2022/397 दर्ज तिथिः—15.12.2022

वादी		प्रतिवादी
सताबी पुत्री राधू खां वगैरह	बनाम	ग्राम पंचायत गुड़ामालानी
जरिये अधिवक्ता श्री जगदीश विश्नोई		जरीये अधिवक्ता श्री डालूराम चौधरी

प्रार्थना पत्र अन्तर्गत धारा—05
परिसीमा अधिनियम—1963
निर्णय तिथिः—09.01.2025

—:निर्णयः—

1. आज यह पत्रावली प्रार्थना—पत्र परिसीमा अधिनियम—1963 की धारा—05 के अन्तर्गत बाबत् निर्णय प्रस्तुत हुई। प्रकरण का सुक्ष्म एवं सारतः वृतान्त इस प्रकार है कि प्रार्थी ने परिसीमा अधिनियम—1963 की धारा—05 के तहत हाजा न्यायालय में प्रार्थना पत्र प्रस्तुत किया। उक्त प्रार्थना पत्र का विवरण निम्न प्रकार हैः—
   - कि मौजा गुड़ामालानी में अवस्थित आराजी खसरा संख्या 1812/4.1925 है0 आराजी वक्त बंदोबस्त के समय वसु पुत्र पीरा के नाम दर्ज थी। वसु पुत्र पीरा के फौत होने पर उत्तराधिकारी गुलमोहम्मद, सदीक, लाडू, राधू व जनी के नाम दर्ज हुई। राधू पुत्र वसु के पूर्व में ही फौत हो जाने के कारण उत्तराधिकारी गीगा उर्फ हकीम, ईस्माईल खां व फूली के नाम नामांतरकरण दर्ज किया गया। जबकि अपीलार्थी राधू पुत्र वसु की वारिस है। जिसका नाम विरासत में दर्ज नहीं किया गया। इस प्रकार राधू की वसीयत उसके दो पुत्र व पत्नी के नाम दर्ज की जाकर विधिक वारिस अपीलार्थी का नाम तर्क कर दिया गया। इसलिये अपीलार्थी द्वारा उक्त नामांतरकरण के विरूद्ध अपील प्रस्तुत की गई है।
   - कि अपीलार्थी का नाम जमाबंदी में नहीं होने की जानकारी अपीलार्थी को नामांतरकरण संख्या 1813 दिनांक 20.12.2003 की नकल दिनांक 28.11.2022 को प्राप्त होने पर हुई। तत्पश्चात् अपीलार्थी द्वारा तत्परता से उक्त अपील प्रस्तुत की गई है।

2. प्रकरण में प्रत्यर्थी द्वारा परिसीमा अधिनियम—1963 की धारा—05 के अन्तर्गत प्रस्तुत प्रार्थना—पत्र का जवाब प्रस्तुत करते हुए निम्न प्रकार निवेदन किया—
   - कि अपीलार्थी द्वारा जमाबंदी में नाम नहीं होने की जानकारी के बारे में अपील मीमो तथा हस्तगत प्रार्थना—पत्र में विरोधाभासी अभिवचन किये हैं।
   - कि नामांतरकरण संख्या 1813 दिनांक 20.12.2003 को ग्राम पंचायत की ग्राम सभा की बैठक में सुना गया था। तत्पश्चात् जमाबंदी में खातेदार का नाम दर्ज किया गया। प्रत्येक वर्ष मजमेआम आयोजित किया जाता है। साथ ही राज्य सरकार द्वारा प्रशासन गांवों के संग अभियान में

भी खातेदारों का नाम मजमेआम में पठन किया जाता है। ऐसी स्थिति में अपीलार्थी को 19 वर्ष तक अपने नाम का खातेदारी में अंकन की जानकारी नहीं होना विचारणीय प्रतीत नहीं होता है।

- कि अपीलार्थी द्वारा 19 वर्षों का विलम्ब का कारण संतोषजनक व उचित आधार प्रस्तुत नहीं किया गया है। अतः यह असामान्य विलम्ब शमन करने योग्य नहीं है। अपीलार्थी द्वारा केवल प्रत्यर्थीगण को परेशान करने के उद्देश्य से उक्त अपील प्रस्तुत की गई है।

3. प्रकरण में उभयपक्षकारान की उक्त प्रार्थना पत्र पर बहस सुनी गई। दौराने बहस विद्वान अधिवक्ता वादी/प्रार्थी ने दौराने जिरह प्रार्थना पत्र के तथ्यों को दौहराते हुये देरी से उपशमन हेतु प्रस्तुत प्रार्थना—पत्र स्वीकार करने का निवेदन किया। दौराने बहस विद्वान अधिवक्ता प्रतिवादी/अप्रार्थी ने दौराने जिरह जवाब प्रार्थना पत्र के तथ्यों को दौहराते हुये देरी से उपशमन हेतु प्रस्तुत प्रार्थना—पत्र खारिज करने निवेदन किया।

Provision

4. प्रकरण में पत्रावली का अवलोकन किया गया व बहस पर मनन किया गया है। प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 के प्रावधान का प्रकरण में अवलोकन किया जाना उचित प्रतीत होता है। अतः परिसीमा अधिनियम—1963 की धारा—03 के प्रावधान का उद्धरण इस प्रकार हैः—

> ***3. Bar of limitation**.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period **shall** be dismissed, although limitation has not been set up as a defence.*
> *(2) For the purposes of this Act,—*
> *(a) a suit is instituted,—*
> *(i) in an ordinary case, when the plaint is presented to the proper officer;*
> *(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and*
> *(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;*
> *(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—*
> *(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;*
> *(ii) in the case of a counter claim, on the date on which the counter claim is made in court;*
> *(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.*

5. इसी प्रकार प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान का प्रकरण में अवलोकन किया जाना उचित प्रतीत होता है। अतः परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान का उद्धरण इस प्रकार हैः—

> ***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 misled 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.

Interpretation

6. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में की गई व्याख्या को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की तुलनात्मक एवं विस्तृत व्याख्या (Interpretation) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors. it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

Construction of Provision

7. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में की गई व्याख्या को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम

न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की भिन्न परिस्थिति में भिन्न संदर्भ की तुलनात्मक एवं विस्तृत व्याख्या (Construction of Provision) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors. it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.*

8. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील *2240/2009* उनवान *Katari Suryanarayana & Ors vs Koppisetti Subba Rao & Ors* में दिनांक 08.04.2009 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की भिन्न परिस्थिति में भिन्न संदर्भ की तुलनात्मक एवं विस्तृत व्याख्या (Construction of Provision) की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *Reliance has been placed by Mr. Ramakrishna Prasad on a decision of this Court in Bhag Mal @ Ram Bux & Ors. v. Munshi (Dead) by LRs & Ors. [(2007) 11 SCC 285], wherein it was held :*
>
> > *"12. It is no doubt true that in terms of Section 3 of the Limitation Act, 1963 as also the provisions of the said Act, a suit must be filed within the prescribed period of limitation. The civil court has no jurisdiction to extend the same.*
> >
> > *13. However the provisions of the Limitation Act should be construed in a broad manner. Different provisions of the Limitations Act may require different constructions, as for example, the court exercised its power in a given case liberally in condoning the delay may have to be taken into consideration for examining its correctness by the court in each case. We however may not be understood to lay down a law that the same principle would apply in case of construction of section 3 of the limitation Act."*

9. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालय द्वारा न्यायिक दृष्टांतों बताए गए उद्देश्य को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान

के उद्देश्य (object) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3 and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.*

10. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील *6414-6417/2008* उनवान *Pundlik Jalam Patil (D) By Lrs vs Exe.Eng. Jalgaon Medium Project & Anr* में दिनांक 03.11.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान के उद्देश्य (Object) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *18. Shri Mohta, learned senior counsel relying on the decision of this court in N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:*
>
> > *"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 rights 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." XXX*
>
> *23. 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. This court in Rajender Singh and others vs. Santa Singh and others [(1973) 2 SCC 705] has observed :*
>
> > *"the object of law of Limitation is to prevent disturbance and 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".*
>
> *In Motichand vs. Munshi [(1969) 2 SCR 824], this court observed that this principle is based on the maxim "interest republicae ut sit finis litum, the interest of the State requires that there should be [illegible] to litigation but at the same time law of Limitation are a means of ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression.*
>
> *It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life*

span 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.

Legal Base

11. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में बताए गए कानूनी आधार व कानूनी इतिहास को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील *6414-6417/2008* उनवान *Pundlik Jalam Patil (D) By Lrs vs Exe.Eng. Jalgaon Medium Project & Anr* में दिनांक 03.11.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान के कानूनी आधार (Legal Base) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

22. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England,4th Ed., Vol.28,p.266,para 605, the policy of the Limitation Acts is laid down as follows:

"The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely,(i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence."

12. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान के कानूनी आधार (Legal Base) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

Law of Limitation

13. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में बताए गए कानूनी आधार को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 6609—6613/2014 उनवान *Brijesh Kumar & Ors vs State Of Haryana & Ors* में दिनांक 24.03.2014 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 में निहित परिसीमा के कानून (Law of Limitation) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *7. The issues of limitation, delay and laches as well as condonation of such delay are being examined and explained every day by the Courts.*
>
> *The law of limitation is enshrined in the legal maxim "Interest Reipublicae Ut 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 rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*
>
> *8. The Privy Council in General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim, AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 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 applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law."*
>
> *9. In P.K. Ramachandran v. State of Kerala & Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:—*
>
> > *"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."*

14. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 6974/2013 उनवान *Basawaraj & Anr vs Spl.Laq Officer* में दिनांक 22.08.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 में निहित परिसीमा के कानून (Law of Limitation) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *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. 24, p. 181:

> *"330. Policy of 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. State Bank of India Staff Assn. (2005) 7 SCC 510; Rajendar Singh & Ors. v. Santa Singh & Ors., AIR 1973 SC 2537; and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448).

14. In P. Ramachandra Rao v. State of Karnataka, 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 A. R. Antulay v. R.S. Nayak, 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 bonafide 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..

15. प्रकरण में विश्लेषण से पूर्व अवधारित करना समीचीन होगा कि परिसीमा अधिनियम 1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालय द्वारा न्यायिक दृष्टांतों में बताए गए देरी की संकल्पना को स्पष्ट करते हुए होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2491—2492 / 2021 उनवान *Union Of India*

vs N Murugesan में दिनांक 07.10.2021 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित परिसीमा के सिद्धांत के तहत देरी की संकल्पना (Concept of Delay) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

DELAY, LACHES AND ACQUIESCENCE:

20.The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court.

LACHES:

21.The word laches is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22.Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy to a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the Court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23.A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

ACQUIE[illegible]ENC

24.We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other. Acquiescence would mean silent or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when

acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place.

25.As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.

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40.We find, much water has already flown under the bridge. The private respondent has already been appointed in 2016 after following the due procedure and continues to date. The respondent is an ex-employee of the first appellant-Society and, having put in 23 years of service, knows its functioning very well. Thus, in our considered view, the order passed by the Division Bench cannot be sustained in the eye of the law.

Sufficient Cause

16. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए देरी के पर्याप्त कारण को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 6974/2013 उनवान *Basawaraj & Anr vs Spl.Laq Officer* में दिनांक 22.08.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक (Sufficient Cause) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

9. Sufficient cause is the cause for which 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 to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point 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 Corporation Ltd. v. Bhootnath Banerjee & Co., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v.Veena @ Bharti AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai 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 that 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, AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201.)

17. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 4440/2008 उनवान *Perumon Bhagvathy Devaswom Perinadu ... vs Bhargavi Amma (D) Thr. Lrs* में दिनांक 11.07.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक (Sufficient Cause) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

In Ram Nath Sao vs. Gobardhan Sao [2002 (3) SCC 195] this Court observed thus :

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

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8. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows :

(i) 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 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 bonafides, deliberate inaction or negligence on the part of the appellant.

18. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक (Sufficient Cause) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

Liberal construction of the expression `sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect `sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression `sufficient cause' implies the presence of legal and adequate reasons. The word `sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005].

Feature of Sufficient Cause

19. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए देरी के पर्याप्त कारण के अवयव को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2474—2475/2012 उनवान *Office Of The Chief Post Master & Ors vs Living Media India Ltd.& Anr* में दिनांक 24.02.2012 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक के अवयव (Feature of Sufficient Cause) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

12) It is not in dispute that the persons concerned were well aware or conversant with the issue involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and

acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

Reasonable Time

20. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए तार्किक समयसीमा को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1964 AIR 215 उनवान *Union Of India vs Ram Charan & Others* में दिनांक 30.04.1963 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक में वांछनीय समय (Reasonable Time) की संकल्पना को समाहित करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

There is no question of construing the expression 'sufficient cause' liberally either because the party in default is the Government or because the question arises in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the, Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

It is true, as contended, that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the opposite party, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law Rule 9 of O. XXII of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He has to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and establish those reasons to the satisfaction of the Court. Only then the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.

Reason for Unknowness

21. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए अज्ञानता के कारण को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1964 AIR 215 उनवान *Union Of India vs Ram Charan & Others* में दिनांक 30.04.1963 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के आधार युक्तियुक्त हेतुक में अज्ञानता के कारक (Reason for Unknowness) की संकल्पना को समाहित करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *It is true, as contended, that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the opposite party, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law Rule 9 of O. XXII of the Code requires the plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.*
>
> *(...) If no such facts are alleged,. none can be established and, in that case the Court cannot set aside the abatement of the suit unless the very circumstances of the case make it so obvious that the Court be in a position to hold that there was sufficient cause for the applicants not continuing the suit by taking necessary steps within the period of limitation. Such would be a very rare case. This means that the bare statement of the applicant that he came to know of the death of the other party more than three months after the death will not ordinarily be sufficient for the Court's holding that the applicant had sufficient cause for not impleading the legal representatives within time.*
>
> *XXX*
>
> *(...) It would be futile to lay down precisely as to what considerations would constitute 'sufficient cause' for setting aside the abatement or for the plaintiff's not applying to bring the legal representatives of the deceased defendant on the record or would be held to be sufficient cause for not making an application to set aside the abatement within the time prescribed. But it can be said that the delay in the making of such applications should not be for reasons which indicate the plaintiff's negligence in not taking certain steps which he could have and should have taken. What would be such necessary steps would again depend on the circumstances of a particular case and each case will have to be decided by the Court on the facts and circumstances of the case. Any statement of illustrative circumstances or facts can tend to be a curb on the free exercise of its mind by the Court in determining whether the facts and circumstances in a particular case amount to `sufficient cause' or not Courts have to use their discretion in the matter soundly in the interests of justice.*
>
> *It will serve no useful purpose to refer to the cases relied on for the appellant in support of its contention that the appellant's ignorance of the death of the respondent is sufficient cause for*

allowing its application for the setting aside of the abatement and that in any case it would be sufficient cause if its ignorance had not been due to its culpable negligence or mala fides. We have shown above that the mere statement that the appellant was ignorant of the death of the respondent, cannot be sufficient and that it is for the appellant, in the first instance, to allege why he did not know of the death of the respondent earlier or why he could not know about it despite his efforts, if he had made any efforts on having some cause to apprehend that the respondent might have died. The correctness of his reasons can be challenged by the other party. The Court will then decide how far those reasons have been established and suffice to hold that the appellant had sufficient cause for not making an application to bring the legal representatives of the deceased respondent earlier on the record.

What to Consider

22. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील *6414-6417/2008* उनवान *Pundlik Jalam Patil (D) By Lrs vs Exe.Eng. Jalgaon Medium Project & Anr* में दिनांक 03.11.2008 को दिये गये निर्णय परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए आवश्यक तथ्यों को ध्यान में रखने (What to Consider) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

19. In Ramlal and others vs. Rewa Coalfields Ltd. [AIR 1962 SC 361], this court held that:

"in construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties 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 of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. `It is further necessary to emphasis that even if the 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. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party of its bona fides may fall for consideration."

On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour.

23. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By L.Rs and ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की

धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए आवश्यक तथ्यों को ध्यान में रखने (What to Consider) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *22. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.7, that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.*

False Averment

24. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों को समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील *6414-6417/2008* उनवान *Pundlik Jalam Patil (D) By Lrs vs Exe.Eng. Jalgaon Medium Project & Anr* में दिनांक 03.11.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थना पत्र में गलत तथ्यों के अभिवचन (False Averment) की विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *11. Whether the respondent made incorrect statement in the application seeking condonation of delay?*
>
> *There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:*
>
> > *"The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent no. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award."*
>
> *This averment in the application on the face of it is totally incorrect. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further scrutiny of the grounds made in the application. Legal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: (1993)1SCC 572]..*

Conduct of Party

25. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों में से एक पक्षकार के आचरण के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 6609—6613/2014 उनवान *Brijesh Kumar & Ors vs State Of Haryana & Ors* में दिनांक 24.03.2014 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार के आचरण (Conduct of Party) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.*
>
> *13. In State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.*
>
> *14. Same view has been reiterated by this Court in Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366, observing as under:—*
>
> > *"Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios…Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."*
>
> *15. In M/s. Rup Diamonds & Ors. v. Union of India & Ors., AIR 1989 SC 674, this Court considered a case where petitioner wanted to get the relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:—*
>
> > *"There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided."*

26. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 276/1958 उनवान *Ramlal, Motilal And Another vs Rewa Coalfields Ltd* में दिनांक 04.05.1961 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार के आचरण (Conduct of Party) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

This question has been considered by some of the High Courts and their decisions show a conflict on the point. In Karalicharan Sarma v. Apurbakrishna Bajpeyi(2) it appeared that the papers for appeal were handed over by the appellant to his advocate in the morning of the last day for filing the appeal. Through pressure of urgent work the advocate did not look into the papers till the evening of that day when he found that was the last day. The appeal ",as filed the next day. According to the majority decision of the Calcutta High Court, in the circumstances just indicated there was sufficient cause to grant the appellant an extension of a day under s. 5 of the Limitation Act because it was held that it was enough if the appellant satisfied the Court that for sufficient cause he was prevented from filing the appeal on the last day and his action during the whole of the period need not be explained. This decision is in favour of the appellant and is in accord with the view which we are inclined to take.

On the other hand, in Kedarnath v. Zumberlal(3) the Judicial Commissioner at Nagpur has expressed the view that an appellant who wailfully leaves the preparation and presentation of his appeal to the last day of the period of limitation prescribed therefore is guilty of negligence and is not entitled to an extension of time if some unexpected or unforeseen contingency prevents him from filing the appeal within time. According to this decision, though the period covered between the last day of filing and the day of actual filing may be satisfactorily explained that would not be enough to condone delay because the appellant would nevertheless have to how why he waited until the last day. In coming to this conclusion the Judicial Commissioner has relied substantially on what he regarded as general considerations. "This habit of leaving things to the last moment", says the learned judge, "has its origin in laxity and negligence, and in my opinion, having regard to the increasing pressure of business in the law Courts and the many facilities now available for the punctual filing of suits, appeals and applications therein, it is high time that litigants and their legal advisers were made to realise the dangers of the procrastination which defers the presentation of a suit, appeal or application to the last day of the limitation prescribed therefore". There can be no difference of opinion on the point that litigants should act with due diligence and care; but we are disposed to think that such general consideration can have very little relevance in construing the provisions of s. 5. The decision of the Judicial Commissioner shows that be based his conclusion' more on this a priori consideration and did not address himself as he should have to the construction of the section itself. Apparently this view has been consistently followed in Nagpur.

In Jahar Mal v. G. M. Pritchard (4) the Patna High Court has adopted the same line. Dawson Miller, C.J., brushed aside the claim of the appellant for condonation of delay on the ground that ',one is not entitled to put things off to the last moment and hope that nothing will occur which will prevent them from being in time. There is always the chapter of accidents to be considered, and it seems to me that one ought to consider that some accident or other may happen which will delay them in carrying out the matter which the Court prescribes a time limit and [illegible] choose to rely upon everything going absolutely smoothly and wait till the last moment. I think they have only themselves to blame if they should find that something has happened which was unexpected, but which ought to be contemplated and are not entitled in such circumstances to the indulgence of the court." These observations are subject to the same comment that we have

made about the Nagpur decision(3)..

27. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार के आचरण (Conduct of Party) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *6. It is clear from the bare reading of the above paragraph that the applicants were totally callous about pursuing their appeal. They have acted irresponsibly and even with negligence. Besides this, they have not approached the Court with clean hands. The applicant, who seeks aid of the Court for exercising its discretionary power for condoning the delay, is expected to state correct facts and not state lies before the Court. Approaching the Court with unclean hands itself, is a ground for rejection of such application.(....)*
>
> *XXX*
>
> *(....)The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay.(....)*

28. इसी प्रकार परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार के आचरण (Conduct of Party) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *22. At this juncture, we are obliged to state that the persons who are nominated or inducted as members or chosen as Secretaries of the managing committees of schools are required to behave with responsibility and not to adopt a casual approach. It is a public responsibility and anyone who is desirous of taking such responsibility has to devote time and act with due care and requisite caution. Becoming a member of the committee should not become a local status syndrome. A statutory committee cannot remain totally indifferent to an order passed by the court and sleep like "Kumbhakarna". The persons chosen to act on behalf of the Managing Committee cannot take recourse to fancy and rise like a phoenix and move the court. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice. Plea of lack of knowledge in the present case really lacks bona fide. The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from N. Balakrishnan (supra): -*
>
> *"The law of limitation fixes a life for such legal remedy for the redress of the legal injury suffered. Time is precious and wasted time would never return. If there is no limit of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The 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 rights 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." We have painfully re-stated the same.

29. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867 / 2015 उनवान *Sheo Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार के आचरण (Conduct of Party) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

23. In Delhi University (supra), another Bench of three Hon'ble Judges of this Court declined to condone the delay of 916 days by the appellant in challenging an order of a Single Judge of the high court. This Court, whilst distinguishing Mst. Katiji (supra) on facts, observed that the consideration to condone could only be made on presentation of a reasonable explanation, and the same could not be done simply because the appellant therein was a public body. It then went on to note the conduct of the appellant in demonstrating delay and laches not only in filing the appeal, but also the original writ petition before the high court at the first instance. While refusing to condone the appellant's delay, it was specifically noted that condonation of delay at that stage would be prejudicial to public interest as one of the respondents therein (Delhi Metro Rail Corporation) had received large amounts of money years ago to carry out development on the subject land in question.

Explanation vs Excuse

30. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए देरी के स्पष्टीकरण एवं बहाने के मध्य अंतर के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867 / 2015 उनवान *Sheo Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार द्वारा देरी के कारण की प्रकृति (Explanation vs Excuse) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

29. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and bona fide. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it

is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

Due diligence

31. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों में से एक पक्षकार के आचरण के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्च न्यायालय, दिल्ली द्वारा CM (M) 1030/2021 & CM APPL. 40806/2021 उनवान *Vijay Gupta vs Mr. Gagninder Kr. Gandhi & Ors* में दिनांक 04.07.2022 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार द्वारा देरी के कारण हेतु अपने स्तर पर वाजिब तत्परता (Due diligence) के संबंध में विवेचन करते हुए दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

17. (.....)

(xii) The proviso to Order VI Rule 17 prohibits, again in absolute terms (as is apparent from the use of the word "shall"), allowing of an application for amendment after commencement of the trial, *unless* the Court finds that, in spite of due diligence, the party could not have raised the matter prior thereto. The latter part of the proviso, which excepts its application where the Court is satisfied that, despite due diligence, the amendment being sought could not have been raised before trial commenced is, of course, a matter entirely within the subjective discretion of the Court. ***Chander Kanta Bansal v. Rajinder Singh Anand12*** adopts, to understand the expression "due diligence", the following definition from Words & Phrases, Pmt Edition, 13A, of the expression:

> "'Due diligence' in law means doing everything reasonable, not everything possible. 'Due diligence means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

Having relied on the above definition, the Supreme Court, in ***Chander Kanta Bansal12***, defined "due diligence" as meaning "the diligence reasonably exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation". ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department13***, in like terms, defined "due diligence" as "a measure of prudence [illegible]y expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances". Importantly, therefore, "due diligence" connotes *reasonable* diligence, keeping in view *the circumstances of the case*. These twin considerations have, therefore, to inform the Court seized with the issue of whether a litigant, before it, had exercised "due diligence". The elasticity

of the expression is self-evident. If trial has commenced, the Court would then have to examine, on facts, whether the party was unable to raise the matter before trial commenced, despite due diligence.

32. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील अपील 1893 / 2008 उनवान *Chander Kanta Bansal vs Rajinder Singh Anand* में दिनांक 11.03.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए प्रार्थी पक्षकार द्वारा देरी के कारण हेतु अपने स्तर पर वाजिब तत्परता (Due diligence) के संबंध में विवेचन करते हुए दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *11. (.....)It was brought to our notice that both sides have closed their evidence and completed their argument, but only at this stage the defendant filed the said application for amendment of her written statement. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort.*
>
> > *"Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence"*
>
> *means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.*

Factors

33. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों / अवयवों / परिस्थितियों के बारे में समझना उचित प्रतीत होता है। इस संबंध में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867 / 2015 उनवान *Sheo Raj Singh (D) Thr Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए कारकों (Factor) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *(...) At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.*

34. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए कारकों (Factor) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *18. In Balwant Singh (supra), this Court refused to condone the delay of 778 days in bringing on record the legal heirs of the petitioner therein through an application filed under Order XXII Rule 9 of the Code of Civil Procedure, 1908. It was observed that though sufficient cause should be construed in a liberal manner, the same could not be equated with doing injustice to the other party. For sufficient cause to receive liberal treatment, the same must fall within reasonable time and through proper conduct of the concerned party. The Court emphasised that for such an application for condonation to be seen in a positive light, the same should be bona fide, based on true and plausible explanations, and should reflect the normal conduct of a common prudent person. Further, the explained delay should be clearly understood in contradistinction to inordinate unexplained delay to warrant a condonation.*

Prejudice to Opposite Party

35. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों / अवयवों / परिस्थितियों में से एक विपक्षी पक्षकार को सम्भावित क्षति के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166 / 2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन करने के विवेचन के दौरान विपक्षी पक्षकार को होने वाले नुकसान (Prejudice to Opposite Party) को ध्यान में रखने के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *13(....) 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, as 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 remedy, it would 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 promptly. The application filed by the applicants lack in detail and even the averments made are not correct. Under exercise of bona fides, the explanation has to be reasonable enough to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the*

applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant..)

Hidden Factor

36. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों में से एक प्रच्छन्न कारक के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867/2015 उनवान *Sheo Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए कारकों (Hidden Factor) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

29 (...) At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

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37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

Advocate

37. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों/अवयवों/परिस्थितियों में से एक पक्षकार के अधिवक्ता के आचरण के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 484/2005 उनवान *State Of Nagaland vs Lipok Ao & Ors* में दिनांक 01.04.2005 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 प्रावधान के तहत देरी के उपशमन के लिए कारकों (Lapse of Advocate) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:—

What constitutes sufficient cause cannot be laid down by hard and fast rules. In New Indian Insurance Co. Ltd. v. Shanti Misra (1975 (2) SCC 840) this Court has held that discretion given by Section 5 should be liberally exercised so as to convert a discretionary matter into one of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram (ILR (1918) 45 Cal 94 (PC) it was

observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

In Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979 (4) SCC 365) which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Matu Din v. A. Narayanan (1969 (2) SCC 770), this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

Grave Miscarriage of Justice

38. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु विचारणीय आवश्यक तथ्यों / अवयवों / परिस्थितियों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 484 / 2005 उनवान *State Of Nagaland vs Lipok Ao & Ors* में दिनांक 01.04.2005 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 प्रावधान के तहत देरी के उपशमन के लिए कारकों (Grave Miscarriage of Justice) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

n State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

In O. P. Kathpalia v. Lakhmir (1984 (4) SCC 66), a Bench of three Judges had held that ***the refusal to condone the delay results in grave miscarriage, it would be a ground to condone the delay.*** *Delay was accordingly condoned.*

Principle

39. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए कानूनी सिद्धांत के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 460/1987 उनवान *Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors* में दिनांक 19.02.1987 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित सिंद्धांतों (Principle) की विवेचना करते हुए विस्तृत व्याख्या कर न्यायिक सिद्धांत प्रतिपादित किया है। जसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *The legislature has conferred the power to condone delay by enacting Section 51 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 meaning- ful 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 justifiably 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:-*
>
> *"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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."*
>
> *1. Ordinarily 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 con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. 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.*
>
> *5. 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 ris[illegible]*
>
> *6. It must be grasped that judi[illegible] is respected not on account of its power to [illegible] injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a liti- gant, are accorded the same treatment and the law is admin- istered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experi- ence shows that on account of an impersonal machinary (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-mak- ing, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "suffi- cient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on mertis in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

40. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित सिद्धांतों (Principle) की विवेचना करते हुए विस्तृत व्याख्या कर न्यायिक सिद्धांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

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, 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.

41. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 8183—8184 / 2013 उनवान *Esha Bhattacharjee vs Mg.Commit.Of of Raghunathpur Nafar Academy and others* में दिनांक 13.09.2013 को दिये गये निर्णय में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित सिद्धांतों (Principle) की विवेचना करते हुए विस्तृत व्याख्या कर न्यायिक सिद्धांत प्रतिपादित किया है। जसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

15. From the aforesaid authorities the principles that can broadly be culled out are:

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 encapsule 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 one.

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.

42. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 4440/2008 उनवान *Perumon Bhagvathy Devaswom Perinadu ... vs Bhargavi Amma (D) Thr. Lrs* में दिनांक 11.07.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित सिद्धांतों (Principle) की विवेचना करते हुए विस्तृत व्याख्या कर न्यायिक सिद्धांत प्रतिपादित किया है। जसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

8. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows :

(i) 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 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 bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in attitude in respect of applications for condonation of delay in filing [illegible] and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of `diligence' or `bonafides' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not

expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

Guidelines

43. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु निर्देश के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 8183—8184 / 2013 उनवान *Esha Bhattacharjee vs Mg.Commit.Of of Raghunathpur Nafar Academy and others* में दिनांक 13.09.2013 को दिये गये निर्णय में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के लागू होने के लिए दिशा—निर्देश (Guidelines) की विवेचना करते हुए विस्तृत व्याख्या कर न्यायिक सिद्धांत प्रतिपादित किया है। जसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

Role/Approach of Court

44. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय की भूमिका / दृष्टिकोण के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1964 AIR 215 उनवान *Union Of India vs Ram Charan & Others* में दिनांक 30.04.1963 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

There is no question of construing the expression 'sufficient cause' liberally either because the party in default is the Government or because the questions arise in connection with the impleading of the legal representatives of the deceased respondent. The provisions of the Code are with a view to advance the cause of justice, and, of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time need not be

over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. This, however, does not mean that the, Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinize it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement.

XXX

The Court will set aside the abatement if it is proved that the applicant was prevented by any sufficient cause from continuing the suit. This means that the applicant had to allege and establish facts which, in the view of the Court, be a sufficient reason for his not making the application for bringing on record the legal representatives of the deceased within time. If no such facts are alleged, none can be established and, in that case the Court cannot set aside the abatement of the suit unless the very circumstances of the case make it so obvious that the Court be in a position to hold that there was sufficient cause for the applicants not continuing the suit by taking necessary steps within the period of limitation. Such would be a very rare case.

XXX

It would be futile to lay down precisely as to what considerations would constitute 'sufficient cause' for setting aside the abatement or for the plaintiff's not applying to bring the legal representatives of the deceased defendant on the record or would be held to be sufficient cause for not making an application to set aside the abatement within the time prescribed. But it can be said that the delay in the making of such applications should not be for reasons which indicate the plaintiff's negligence in not taking certain steps which he could have and should have taken. What would be such necessary steps would again depend on the circumstances of a particular case and each case will have to be decided by the Court on the facts and circumstances of the case. Any statement of illustrative circumstances or facts can tend to be a curb on the free exercise of its mind by the Court in determining whether the facts and circumstances of a particular case amount to `sufficient cause' or not Courts have to use their discretion in the matter soundly in the interests of justice.

45. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2909—2913 / 2005 उनवान *Lanka Venkateswarlu (D) By Lrs vs State Of A.P. & Ors* में दिनांक 24.02. 2011 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. While dealing with applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised reasonably and fairly and known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims and fancies; prejudices or

predilections can not and should not form the basis of exercising discretionary powers.

46. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.*
>
> *13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.*

47. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 6974 / 2013 उनवान *Basawaraj & Anr vs Spl.Laq Officer* में दिनांक 22.08.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *9. (....) 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 bonafide or was merely a device to cover an ulterior purpose.*

48. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 4440 / 2008 उनवान *Perumon Bhagvathy Devaswom Perinadu Vs Bhargavi Amma (D) Thr. Lrs* में दिनांक 11.07.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court)

की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *8. The principles applicable in considering applications for setting aside abatement may thus be summarized as follows :*
>
> *(i)...*
>
> *(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
>
> *(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*
>
> *(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.*
>
> *(v) Want of `diligence' or `inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.*

49. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 460/1987 उनवान *Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors* में दिनांक 19.02.1987 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a liti- gant, are accorded the same treatment and the law is admin- istered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machin- no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-mak- ing, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to*

understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on mertis in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

50. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2909—2913/2005 उनवान *Lanka Venkateswarlu (D) By Lrs vs State Of A.P. & Ors* में दिनांक 24.02.2011 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

27. The order of the High Court, in our opinion, is based purely on the personal perceptions and predilections of the Judges on the bench. The latent anger and hostility ingrained in the expressions employed in the judgment have denuded the judgment of impartiality. In its desire to castigate the government pleaders and the Court staff, the High Court has sacrificed the "justice oriented approach", the bedrock of which is fairness and impartiality. Judges at all levels in this country subscribe to an oath when entering upon office of Judgeship, to do justice without fear or favour, ill will or malice. This commitment in form of a solemn oath is to ensure that Judges base their opinions on objectivity and impartiality. The first casualty of prejudice is objectivity and impartiality. It is also well known that anger deprives a human being of his ability to reason. Judges being human are not immune to such disability. It is of utmost importance that in expressing their opinions, Judges and Magistrates be guided only by the considerations of doing justice. We may notice here the observations made by a Constitution Bench of this Court in the case of State of U.P. Vs. Mohammad Naim , which are of some relevance in the present context. In Paragraph 11 of the judgment, it was observed as follows:-

> *"If there is one principle of cardinal importance in the administration of justice, it is this: the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that [illegible] generalisations defeat the very purpose [illegible] they are made. It has been judicially recognised [illegible] in the matter of making disparaging remarks against persons or authorities which could not be justified [illegible] into consideration before a Court of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is*

before the court or has an opportunity of explaining or defending himself;(b) whether there is evidence on record bearing on that conduct, justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

51. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 8183—8184 / 2013 उनवान *Esha Bhattacharjee vs Mg.Commit.Of of Raghunathpur Nafar Academy and others* में दिनांक 13.09.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय की भूमिका एवं दृष्टिकोण (Role/Approach of Court) की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

5. Before we delve into the factual scenario and the defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

6 (....)

7. In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore[2], Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

"The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.[3] ; Shakuntala Devi Jain v. Kuntal Kumari[4] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi[5] ; Lala Mata Din v. A. Narayanan[6] ; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

8. In O.P. Kathpalia v. Lakhmir Singh (dead) and others[7], the court was dealing with a fact- situation where the interim order passed by the court of first instance was an interpolated order and it was not ascertainable as to when the order was made. The said order was under appeal before the District Judge who declined to condone the delay and said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set

aside the orders impugned therein observing that the appeal before the District Judge deserved to be heard on merits.

9. In State of Nagaland v. Lipok AO and others[8], the Court, after referring to New India Insurance Co. Ltd. V. Shanti Misra[9], N. Balakrishnan v. M. Krishnamurthy[10], State of Haryana v. Chandra Mani[11] and Special Tehsildar, Land Acquisition v. K.V. Ayisumma[12], came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.

10. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another[13], where a two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In Improvement Trust, Ludhiana v. Ujagar Singh and others[14], it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. (.....)
13. Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai[19], the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil[20] wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus: -

> *"23. What needs to be emphasized is that even though a liberal and justice-oriented 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." Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14. In B. Madhuri Goud v. B. Damodar Reddy[21], the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

Equilibrium

52. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु न्याय निर्णयन एवं विपक्षी पक्षकार को देरी से होने वाले नुकसान के मध्य संतुलन के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2909—2913/2005 उनवान *Lanka Venkateswarlu (D) By Lrs vs State Of A.P. & Ors* में दिनांक 24.02.2011 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय द्वारा देरी के उपशमन एवं उभयपक्षकारों के साथ न्याय के मध्य संतुलन (Equilibrium) बनाने बाबत की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

21. (....) In the case of Mithailal Dalsangar Singh and Ors. Vs. Annabai Devram Kini & Ors, (Supra), this Court again reiterated that in as much as abatement results in denial of hearing on the merits of the case, the provision of an abatement has to be construed strictly. On the other hand, the prayer of setting aside abatement and the dismissal consequent upon abatement had to be considered liberally. It was further observed as follows:-

"The Courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court."

XXX

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint which a Judge is required to maintain whilst adjudicating a lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

53. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत न्यायालय द्वारा देरी के उपशमन एवं उभयपक्षकारों के साथ न्याय के मध्य संतुलन (Equilibrium) बनाने बाबत की विस्तृत व्याख्या व विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *13. (.....) But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of Ramlal and Others v. Rewa Coalfields Ltd., [AIR 1962 SC 361] this Court took the view:*
>
> > *"7. 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, ILR 13 Mad 269.*
> > *It is however, necessary to emphasize 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;..."*

Length of Delay vs Sufficient Cause

54. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु देरी एवं पर्याप्त कारण के मध्य संबंध के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867/2015 उनवान *Ram Nath Sao @ Ram Nath Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए देरी के समय एवं

युक्तियुक्त कारण के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *17. State of Nagaland v. Lipok AO & Ors.4 arose out of an appeal where this Court condoned the State's delay of 57 days in applying for grant of leave to appeal before the high court against acquittal of certain accused persons. This Court observed that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred. Further, this Court noted that what counted was indeed the sufficiency of the cause of delay, and not the length, where the shortness of delay would be considered when using extraordinary discretion to condone the same. This Court also went on to record that courts should attempt to decide a case on its merits, unless the same is hopelessly without merit. It was also observed therein that it wouldbe improper to put the State on the same footing as an individual since it was an impersonal machinery operating through its officers.*

Within Such Period

55. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए प्रावधान में निहित शब्द के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 276 / 1958 उनवान *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd* में दिनांक 04.05.1961 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान में निहित प्रावधान (Within Such Period) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *Now, what do the words "within such period" denote ? It is possible that the expression ',within such period" may sometimes mean during such period. But the question is: Does the context in which the expression occurs in s. 5 justify the said interpretation ? If the limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which s. 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take 'the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period and so prime facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considera- tions of diligence of parties in construing the words of s.5. The context seems to suggest that "within such period"means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under s. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show suffi- cient cause not only for-not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal was filed. To hold that the expression "within such period" means during such period would in our opinion be repugnant to the context. We would accordingly hold that the learned Judicial Commissioner was in error taking the view that the failure of the appellant to*

account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness.

Justice vs Technicality

56. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय हेतु न्याय निर्णयन एवं प्रक्रियात्मक कानून की जटिलता के मध्य संबंध के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867/2015 उनवान *Sheo Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए न्याय एवं प्रकरण की तकनीकी खामी के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

17. State of Nagaland v. Lipok AO & Ors.4 arose out of an appeal where this Court condoned the State's delay of 57 days in applying for grant of leave to appeal before the high court against acquittal of certain accused persons. This Court observed that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred. Further, this Court noted that what counted was indeed the sufficiency of the cause of delay, and not the length, where the shortness of delay would be considered when using extraordinary discretion to condone the same. This Court also went on to record that courts should attempt to decide a case on its merits, unless the same is hopelessly without merit. It was also observed therein that it wouldbe improper to put the State on the same footing as an individual since it was an impersonal machinery operating through its officers.

57. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए न्याय एवं प्रकरण की तकनीकी खामी के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors., this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations c... delay is not deliberate, it ought to be condoned.

58. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 460/1987 उनवान *Collector Land Acquisition Anantnag & Anr. vs. Katiji & Ors* में दिनांक 19.02.1987 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के

तहत देरी के उपशमन के लिए न्याय एवं प्रकरण की तकनीकी खामी के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *"When substantial justice and technical considerations are A 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."*
> *"It must be grasped that judiciary is respected not 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."*

Discreation

59. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय द्वारा विवेक के अनुप्रयोग हेतु आवश्यक परिस्थितियों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 856—857 / 1974 उनवान *G. Ramegowda, Major, Etc vs Special Land Acquisition Officer,* में दिनांक 10.03.1988 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *7. The contours of the area of discretion of the Courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd., [1962] 2 SCR 762; Shakuntala Devi Jain v.Kuntal Kumari, [1969] 1 SCR 1006; Concord of India Insurance Co. Ltd. v. Nirmala Devi and ors., [1979] 3 SCR 694; Lala Mata Din v. A. Narayanan, [1970] 2 SCR 90 and Collector, Land Acquisition v. Katiji, [1987] 2 SCC 107 etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.*
>
> *8. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.*
>
> *The law of limitation is, no doubt, the same for a private citizen as for Governmental-authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government moves in a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of officers or where the officers were clearly in cross-purposes with it.*

60. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 6974 / 2013 उनवान *Basawaraj & Anr vs Spl.Laq Officer* में दिनांक 22.08.2013 को दिये गये निर्णय में

परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *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.*

61. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2909—2913 / 2005 उनवान *Lanka Venkateswarlu (D) By Lrs vs State Of A.P. & Ors* में दिनांक 24.02.2011 को दिये गये निर्णय में परिसीमा अधिनियम—1963 परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.*

62. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 8183—8184 / 2013 उनवान *Esha Bhattacharjee vs Mg.Commit.Of of Raghunathpur Nafar Academy and others* में दिनांक 13.09.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *13. Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil wherein it has been stated that [a] distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereto the former case the consideration of prejudice to the opposite side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the Hon'ble Judge held as thus: -*
>
> *"23. What needs to be emphasised is that even though a liberal and justice-oriented 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."
Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

63. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा 1998 AIR SCW 2177 उनवान *P.K. Ramachandran vs State Of Kerala & Anr* में दिनांक 19.09.1997 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

It would be noticed from a perusal of the impugned order (supra) that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is essential pre-requisite to condonation of delay.

64. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों (Discreation) की विस्तृत व्याख्या करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. It is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

Special Circustances

65. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय द्वारा विवेक के अनुप्रयोग हेतु विशेष परिस्थितियों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 8298/2019 उनवान *State Of Manipur & 2 Ors vs Koting Lamkang* में दिनांक 22.10.2019 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के तहत न्यायालय की विवेकाधीन शक्तियों की विस्तृत व्याख्या करते हुए विवेक के प्रयोग के लिए असाधारण परिस्थितियों (Special Circustances) के संदर्भ में न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *8. But while concluding as above, it was necessary for the court to also be conscious of the bureaucratic delay and the slow pace in reaching a Government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the court felt that the delay in the appeal filed by the State, should not be condoned.*
>
> *9. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by State are lost for individual default, those who are at fault, will not usually be individually affected.*

Public Interest vs Prejudice

66. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए न्यायालय द्वारा विवेक के अनुप्रयोग हेतु विशेष परिस्थितियों के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील *6414-6417/2008* उनवान *Pundlik Jalam Patil (D) By Lrs vs Exe.Eng. Jalgaon Medium Project & Anr* में दिनांक 03.11.2008 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए सार्वजनिक न्याय एवं विपक्षी पक्षकारों के हितों पर नकारात्मक प्रभाव के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *24. Public interest undoubtedly is a paramount consideration in exercising the courts discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land loosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land loosers. These public interest paramount ought to be [illegible] by the courts while exercising the discretion de[illegible] the application filed under Section 5 of the Limitation Act, praying the land loosers to condone [illegible] law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly disturbed. To condone inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public*

interest.

> *25. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it.*

67. इसी प्रकार इमाननीय उच्चतम न्यायालय द्वारा सिविल अपील 856—857/1974 उनवान *G. Ramegowda, Major, Etc vs Special Land Acquisition Officer,* में दिनांक 10.03.1988 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए सार्वजनिक न्याय एवं विपक्षी पक्षकारों के हितों पर नकारात्मक प्रभाव के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *7. (.....) If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. <u>If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal.</u>*

68. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5867/2015 उनवान *Sheo Raj Singh(D) Tr.Lrs.. vs Union Of India* में दिनांक 09.10.2023 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए सार्वजनिक न्याय एवं विपक्षी पक्षकारों के हितों पर नकारात्मक प्रभाव के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *23. In Delhi University (supra), another Bench of three Hon'ble Judges of this Court declined to condone the delay of 916 days by the appellant in challenging an order of a Single Judge of the high court. This Court, whilst distinguishing Mst. Katiji (supra) on facts, observed that the consideration to condone could only be made on presentation of a reasonable explanation, and the same could not be done simply because the appellant therein was a public body. It then went on to note the conduct of the appellant in demonstrating delay and laches not only in filing the appeal, but also the original writ petition before the high court at the first instance. While refusing to condone the appellant's delay, it was specifically noted that condonation of delay at that stage would be prejudicial to public interest as one of the respondents therein (Delhi Metro Rail Corporation) had received large amounts of money years ago to carry out development on the subject land in question.*

69. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत देरी के उपशमन के लिए सार्वजनिक न्याय एवं विपक्षी पक्षकारों के हितों पर नकारात्मक प्रभाव के मध्य संबंध में तुलनात्मक विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be*

construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. 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 concerned party. The purpose of introducing liberal construction normally is to introduce the concept of `reasonableness' as it is understood in its general connotation. 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, as 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. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified.* ***But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party.*** *This balance has to be kept in mind by the Court while deciding such applications.*

S5 vs S14

70. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए परिसीमा अधिनियम—1963 की धारा—05 तथा धारा—14 के मध्य संबंध के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 276/1958 उनवान *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd* में दिनांक 04.05.1961 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 एवं धारा—14 के आपसी संबंध एवं अनुप्रयोग के बारे में विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

It is, however, necessary to emphasise that even after sufficient cause has been shown by a party for 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 s. 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 s. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of ss. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of s. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under s. 5 without reference to s. 14. In the present case there is no difficulty in holding that the discretion should be exercised in favour of the appellant be cause apart from the general criticism made against the appellant's lack or 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 ap- pellant'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.

Doctrine of Equality

71. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए उक्त प्रावधान के अनुप्रयोजन हेतु समानता के सिद्धांत के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 6974 / 2013 उनवान *Basawaraj & Anr vs Spl.Laq Officer* में दिनांक 22.08.2013 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के तहत किसी प्रकरण में देरी के उपशमन करने के लिए पूर्व में किसी प्रकरण के आधार पर उपशमन का अनुतोष लागू नहीं होने के संबंध में समानता के सिद्धांत (Doctrine of Equality) पर विस्तृत विवेचन करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/ decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched to that for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR

1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937).

Test

72. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए उक्त प्रावधान के अनुप्रयोग हेतु आवश्यक परीक्षण के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166 / 2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के तहत किसी प्रकरण की परीक्षा (Test) की विवेचना करते हुए न्यायिक दृष्टांत प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. <u>The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.</u>*

Application

73. प्रकरण में विश्लेषण से पूर्व सर्वप्रथम परिसीमा अधिनियम—1963 की धारा—03 तथा धारा—05 के प्रावधान की माननीय न्यायालयों द्वारा न्यायिक दृष्टांतों में विवेचित किये गए उक्त प्रावधान के अनुप्रयोजन के बारे में समझना उचित प्रतीत होता है। इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा विशेष अनुमति याचिका (सिविल) 276 / 1958 उनवान *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd* में दिनांक 04.05.1961 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के अनुप्रयोग (Application) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *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 s. 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.*

74. इसी प्रकार माननीय उच्चतम न्यायालय [illegible] सिविल अपील 2909—2913 / 2005 उनवान *Lanka Venkateswarlu (D) By Lrs Vs. St. Of A.P. & Ors* में दिनांक 24.02.2011 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के अनुप्रयोग (Application) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

> *26. We are at a loss to fathom any logic or rationale, which*

could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.

75. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील 1166/2006 उनवान *Balwant Singh (Dead) vs Jagdish Singh & Ors* में दिनांक 08.07.2010 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के अनुप्रयोग (Application) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. 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 concerned party. The purpose of introducing liberal construction normally is to introduce the concept of `reasonableness' as it is understood in its general connotation. 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.

76. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा विशेष अनुमत याचिका *31248/2018* उनवान *Pathapati Subba Reddy (Died) By Lrs And ... vs Special Deputy Collector (La)* में दिनांक 08.04.2024 को दिये गये निर्णय में परिसीमा अधिनियम—1963 की धारा—05 के प्रावधान के अनुप्रयोग (Application) के संबंध में विवेचना करते हुए विस्तृत व्याख्या की है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार हैः—

30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is misuse of the legislative intent or the express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have

been rendered in ignorance of the earlier pronouncement in the case of Basawaraj (supra).

77. उपरोक्त विधिक प्रावधान एवं न्यायिक दृष्टांतों के संदर्भ में परिसीमा अधिनियम—1963 की धारा—05 के अवलोकन से ज्ञात होता है कि किसी प्रकरण में परिसीमा अवधि के पश्चात् किसी पक्षकार द्वारा की गई कार्यवाही के साथ देरी के उपशमन के प्रार्थना—पत्र को निस्तारित करते समय प्रकरण की गुणवागुण पर ध्यान दिया जाना अपेक्षित है। साथ ही किसी प्रकरण में परिसीमा अवधि के पश्चात् किसी पक्षकार द्वारा की गई कार्यवाही के साथ देरी के उपशमन के प्रार्थना—पत्र को निस्तारित करते समय पक्षकार के आचरण, प्रार्थना—पत्र के प्रस्तुत करने के चरण के साथ—साथ देरी का पर्याप्त संतोषप्रद कारण प्रस्तुत किया जाना अपेक्षित है। साथ ही न्यायालय को बिल्कुल तकनीकी दृष्टिकोण नहीं अपनाते हुए प्रार्थना—पत्र के निस्तारण हेतु प्रस्तुतकर्ता पक्षकार को हुए नुकसान व होने वाले लाभ के साथ—साथ विपक्षी पक्षकार को हुए लाभ व होने वाले नुकसान के मध्य संतुलन बनाते हुए अन्य आवश्यक कारकों को ध्यान में रखते हुए प्रकरण के प्रभावी व पूर्ण निस्तारण हेतु न्याय निर्णयन के अंतिम व व्यापक दृष्टिकोणयुक्त उद्देश्य के तार्किक रूप से विचारण करते हुए उक्त प्रकार के देरी से उपशमन निवेदन वाले प्रार्थना—पत्रों के निर्णयन की अपेक्षा की जाती है। उक्त कानूनी प्रावधानों एवं न्यायिक दृष्टांतों के संदर्भ में परिसीमा अधिनियम—1963 की धारा—05 के तहत प्रस्तुत प्रार्थना—पत्र उक्त प्रावधान व न्यायिक दृष्टांतों द्वारा प्रतिपादित परीक्षण पर जांच किया जाना आवश्यक है।

78. प्रकरण में नामांतरकरण संख्या 1813 दिनांक 20.12.2003 के द्वारा अपीलार्थी के पिता राधू पुत्र वसु की विरासत दर्ज की गई थी। वर्तमान में अपीलार्थी की उम्र करीब 36 वर्ष है। इस प्रकार वक्त फैसल नामांतरकरण दिनांक 20.12.2003 को अपीलार्थी की उम्र लगभग 17 वर्ष रही होगी। इस प्रकार वक्त फैसल नामांतरकरण अपीलार्थी मौजा गुड़ामालानी में अपने भाईयों व माता के साथ निवास करना प्रबल संभाव्य है। इस प्रकार वक्त फैसल नामांतरकरण दिनांक 20.12.2003 को अपीलार्थी की उम्र लगभग 17 वर्ष के आसपास होने से अपीलार्थी लगभग बालिग होने के आधार पर अपने अधिकारों के प्रति जागरूक होना प्रबल संभाव्य है। इस प्रकार इस प्रकार अपीलार्थी को अपने पिता की विरासत के बारे में कार्यवाही का संज्ञान बिल्कुल नहीं होने की संभावना नगण्य प्रतीत होती है।

79. इसी प्रकार नामांतरकरण संख्या 1813 दिनांक 20.12.2003 के द्वारा अपीलार्थी के पिता राधू पुत्र वसु की विरासत दर्ज करने के करीब 6935 दिन की लम्बी अवधि के पश्चात् अपील प्रस्तुत की गई है। अपील के साथ देरी के उपशमन हेतु प्रस्तुत प्रार्थना—पत्र में अपीलार्थी द्वारा देरी का एकमात्र कारण अपीलार्थी को जमाबंदी में अपना नाम नहीं होने की जानकारी नहीं होना मात्र अभिकथित किया है। अपीलार्थी द्वारा करीब 6935 दिन की लम्बी अवधि के दौरान राजस्व रिकॉर्ड की जांच नहीं करने के बारे में कोई अभिकथन नहीं किया है। साथ ही वर्तमान परिदृश्य में सरकारी योजनाओं के लाभ तथा मूल निवास प्रमाण पत्र/जाति प्रमाण पत्र हेतु राजस्व रिकॉर्ड का अपरिहार्य दस्तावेज होने के करीब 6935 दिन की लम्बी अवधि तक राजस्व रिकॉर्ड का अवलोकन नहीं करना भी एक अविचारणीय संभावना प्रतीत होती है।

80. इसी प्रकार नामांतरकरण संख्या 1813 दिनांक 20.12.2003 के द्वारा अपीलार्थी के पिता राधू पुत्र वसु की विरासत दर्ज करने के समय अपीलार्थी की उम्र बालिग होने से अपील प्रस्तुत करने तक करीब 6935 दिन की लम्बी अवधि के दौरान राजस्व रिकॉर्ड में अपने नाम की जांच नहीं करना अपीलार्थी के जागरूक आचरण को प्रदर्शित नहीं करता है। साथ ही अपीलार्थी द्वारा करीब 6935 दिन की लम्बी अवधि

के पश्चात् अचानक राजस्व इन्द्राज की जांच करने के पीछे के तात्कालिक कारण के बारे में कोई अभिवचन नहीं किये हैं। इससे पृथमदृष्टया अपीलार्थी का करीब 6935 दिन की लम्बी अवधि की देरी को उपशमन करने हेतु पर्याप्त व संतोषप्रद कारण प्रस्तुत किया जाकर विचारणीय प्रतीत नहीं होता है।

81. इस प्रकार के प्रकरणों में न्यायालय को बिल्कुल तकनीकी दृष्टिकोण नहीं अपनाते हुए प्रार्थना—पत्र के निस्तारण हेतु प्रस्तुतकर्ता पक्षकार को हुए नुकसान व होने वाले लाभ के साथ—साथ विपक्षी पक्षकार को हुए लाभ व होने वाले नुकसान के मध्य संतुलन बनाते हुए अन्य आवश्यक कारकों को ध्यान में रखते हुए प्रकरण के प्रभावी व पूर्ण निस्तारण हेतु न्याय निर्णयन के अंतिम व व्यापक दृष्टिकोणयुक्त उद्देश्य के तार्किक रूप से विचारण करते हुए उक्त प्रकार के देरी से उपशमन निवेदन वाले प्रार्थना—पत्रों के निर्णयन की अपेक्षा की जाती है। परिसीमा कानून के पीछे कानूनी आधार है कि किसी प्रकरण में किसी पक्षकार के पक्ष में हुए निर्णय से उत्पन्न लाभ को चुनौती देने की समयसीमा समाप्त हो जाने के पश्चात् उस पक्षकार विशेष के पक्ष में सृजित हुए अधिकारों को शांतिपूर्ण उपयोग में लिये जाने के अधिकार को चुनौती देने वाले न्यायिक कार्यवाहियों को सामान्यतः विराम दिया जाना सार्वजनिक हित में आवश्यक है। इसी प्रकार सार्वजनिक हित का सिद्धांत है कि अपने अंतिम निष्कर्ष पर पहुंच चुके तथा शांत हो चुके विवादों को बिना पर्याप्त कारण पुर्नजीवित नहीं किया जाना अपेक्षित है।

82. अपीलार्थी द्वारा अपने प्रार्थना—पत्र के समर्थन में *न्यायिक दृष्टांत 2020 (2) आरआरटी 575 उनवान गोसाईराम बनाम अमरीदेवी* प्रस्तुत किया है। उक्त प्रकरण में माननीय राजस्व मण्डल अजमेर के समक्ष करीब 40 वर्ष पश्चात् नामांतरकरण प्रक्रिया को चुनौती देने वाली अपील को विचारणीय न्यायालय द्वारा स्वीकार करने के निर्णय के विरूद्ध निगरानी को खारिज किया गया। उक्त प्रकरण में माननीय राजस्व मण्डल अजमेर द्वारा निगरानी को गुणावगुण पर खारिज करने के बजाय देरी उपशमन के प्रार्थना—पत्र को स्वीकार करने के आदेश को अंतरिम आदेश मानते हुए भू—राजस्व अधिनियम—1956 की धारा—84 ए के अंतर्गत अंतरिम आदेश के विरूद्ध निगरानी पोषणीय नहीं होने के आधार पर खारिज किया। इस प्रकार उक्त न्यायिक दृष्टांत से अपीलार्थी को अपने प्रकरण को साबित करने में कोई सहायता नहीं मिलती है।

83. इसी प्रकार अपीलार्थी द्वारा अपने प्रार्थना—पत्र के समर्थन में *न्यायिक दृष्टांत 2013 (1) आरआरटी 473* उनवान *कन्नीराम बनाम डाकूबाई* प्रस्तुत किया है। उक्त प्रकरण में माननीय राजस्व मण्डल अजमेर के समक्ष करीब 34 वर्ष पश्चात् नामांतरकरण प्रक्रिया को चुनौती देने वाली अपील को विचारणीय न्यायालय द्वारा स्वीकार करने के निर्णय के विरूद्ध निगरानी को खारिज किया गया। उक्त प्रकरण में माननीय राजस्व मण्डल अजमेर द्वारा निगरानी को गुणावगुण पर खारिज करने के बजाय देरी उपशमन के प्रार्थना—पत्र को स्वीकार करने के आदेश को अंतरिम आदेश मानते हुए भू—राजस्व अधिनियम—1956 की धारा—84 ए के अंतर्गत अंतरिम आदेश के विरूद्ध निगरानी पोषणीय नहीं होने के आधार पर खारिज किया। इस प्रकार उक्त न्यायिक दृष्टांत से अपीलार्थी को अपने प्रकरण को साबित करने में कोई सहायता नहीं मिलती है।

84. अपीलार्थी द्वारा अपने प्रार्थना—पत्र के समर्थन में न्यायिक दृष्टांत निगरानी 2459 / 2003 तथा 2460 / 2003 उनवान *राधेश्याम बनाम सुरेश कुमार* प्रस्तुत किया है। उक्त न्यायिक दृष्टांत के तथ्य वर्तमान प्रकरण से बिल्कुल जुदा होने के आधार पर उक्त न्यायिक दृष्टांत से अपीलार्थी को उक्त प्रकरण को साबित करने में कोई सहायता नहीं मिलती है।

85. इस प्रकार प्रकरण में नामांतरकरण संख्या 1813 दिनांक 20.12.2003 के द्वारा अपीलार्थी के पिता राधू पुत्र वसु की विरासत दर्ज होने से फौतगी नामांतरकरण के विरूद्ध अपील प्रस्तुत करने की परिसीमा अवधि समाप्त होने पर प्रत्यर्थी के पक्ष में अधिकार सृजित हो गये हैं। जिनका प्रत्यर्थी शांतिपूर्ण तरीके से करीब 6935 दिन की लम्बी अवधि से आमदरफत कर रहा है। उक्त प्रत्यर्थी के अधिकार के शांतिपूर्ण आमदरफत को पुर्नजीवित करने से प्रत्यर्थी को भारी नुकसान होना अपेक्षित है। साथ ही अब करीब 6935 दिन की लम्बी अवधि पश्चात् उक्त विवाद को पुर्नजीवित करने हेतु अपीलार्थी पर्याप्त व संतोषप्रद कारण प्रस्तुत करने में असफल रहा है। अब करीब 6935 दिन की लम्बी अवधि पश्चात् उक्त विवाद को पुर्नजीवित करने से अपीलार्थी को होने वाले लाभ व प्रत्यर्थी को होने वाले नुकसान की तुलना करने हेतु अपीलार्थी द्वारा देरी के उपशमन आवश्यक परिस्थितियां एवं अपने दावे के समर्थन में विशेष परिस्थितियां प्रस्तुत करना आवश्यक है। जबकि अपीलार्थी ऐसा करने में असफल प्रतीत होती है। इस प्रकार अपीलार्थी का करीब 6935 दिवस की देरी से प्रस्तुत की गई अपील के साथ प्रस्तुत देरी के उपशमन के लिये प्रस्तुत प्रार्थना—पत्र में अभिकथित कारण व परिस्थितियों को देरी के उपशमन के लिये न्यायालय द्वारा अपने विवेक तथा अंतर्निहित शक्तियों के अनुप्रयोग पर प्रत्यर्थी के साथ शांतिपूर्ण अधिकार को लम्बे समय के बाद चुनौती देने हेतु पर्याप्त व संतोषप्रद नहीं मानने के कारण प्रार्थना—पत्र खारिज किया जाना उचित समझता है। अतः

आदेश है कि

अपीलार्थी द्वारा परिसीमा अधिनियम—1963 की धारा—05 के तहत प्रस्तुत प्रार्थना—पत्र अस्वीकार किया जाता है एवं अपील खारिज की जाती है।

यह निर्णय मेरे द्वारा आज दिनांक 09.01.2025 को लिखवाया जाकर हस्ताक्षर एवं मोहर युक्त जारी किया जाकर सरे इजलास सुनाया गया।

(केशव कुमार मीना आर.ए.एस)
सहायक कलक्टर
गुढ़ामालानी—बाड़मेर

Signature Not Verified

Digitally signed by Keshav Kumar Meena
Date: 2025.01.09 20:05:51 IST
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