

Condonation of Delay and Assurance of Justice: An overview

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Abstract

Law of Limitation is based on the legal maxim “Interest Reipublicae Ut Sit Finis Litium” that means it is for the general rule of the welfare that a period be put to litigation. It is a general principle of law that law is made to protect only diligent and vigilant people but not the indolent. Law will not protect those people who are careless about their rights. The Law of Limitation prescribes the time-limit for different suits within which an aggrieved person can approach the court for redress or justice. The suit, if filed after the expiration of time-limit, is struck by the law of limitation. The concept is that every legal remedy must be kept alive for a legislatively fixed period of time. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. This article mainly focuses on the fact that how section 5 of the Limitation Act, 1908 saves the rights and interests of the litigants who have failed to file the proceedings within the prescribed period of limitation. In this paper efforts have been made to examine the factors or causes which may be shown as sufficient causes to satisfy the court for condoning the delay and which enable the applicant to approach before the court within the statutory period. It has also been tried to develop a comprehensive idea for understanding the fact that condonation of delay is a matter of discretion of the court and no one can claim it as of right.

Keywords: Sufficient Cause, Discretion of the Court, Negligence, Explanation of delay, Government.

1. Introduction

Section 5 of the Limitation Act, 1908 is very important as it saves the right to appeal, revision, review or application beyond the statutory period of limitation in circumstances. It empowers the court to condone the delay on sufficient cause. It vests on the court the discretion to admit appeal, revision, review or application after the expiry of the prescribed period on sufficient ground but such discretion must be exercised judicially and not arbitrarily. Section 5 provides for the extension of the prescribed period of limitation on condonation of delay. It does not apply to the fresh suit. The purpose of this section is to augment the cause of justice and not to throttle it in the threshold. Therefore, these provisions should be liberally constructed rather than rigid interpretation. The provisions of section-5 are equally applicable to the government as well as to the private individual. Every case shall have to be dealt with on its individual merit depending on the facts and circumstances related therewith.

The purpose of the Limitation Act is to put an end to the litigation on certain point of time. The discretion to be exercised under this section should not be so much liberal so that it does not encourage negligence on the part of the applicant to defeat the purpose of the law. If the period of limitation in filling an appeal against an order of conviction is not extended the result can be that an innocent person may suffer punishment which he does not deserve, but if the same course is followed in the case of an order of acquittal all that can possibly result is that a guilty person may escape punishment which he deserves.¹

The common practice in our legal system is that the applicant must explain the cause of delay as precisely as possible supported by affidavit under section -5 at the first instance together with the application. The delay may be condoned if it is sought in the application itself by showing sufficient cause therefore. Whether the cause shown is sufficient or not depends on the judicial discretion of the court. Condonation of delay may be refused when there is exceptionally inordinate delay.

1.2 Scope of Section-5 of the Limitation Act, 1908:

The scope of section-5 is limited, the principle of condonation of delay enacted under this section is limited to appeal, application for a revision or a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force but does not cover the fresh suit. Thus the provisions are applicable to both civil and criminal law.

As provided in sub-section (2) of section 29 of the Limitation Act, 1908, section 5 does not apply to the special or local law where special provisions for limitation are provided. Thus the scope and application of section 5 is restricted by sub-section (2) of section 29. The condonation of delay as mentioned in section 5 is permissible in cases of special or local law where section 5 is made applicable by express provisions. The words “the remaining provisions of this Act shall not apply in clause (b) of sub-section (2) of section 29” mean that the remaining provisions of the Limitation Act shall not apply unless they are made expressly applicable by the

¹ 11 DLR 40.

special or local Acts to question.¹ If any special or local law does not provide any period of limitation to enforce any right created thereunder, section 29(2) of the Limitation Act, 1908 will not apply and the matter will be governed by the appropriate provisions of the Limitation Act.² Court of Wards Act is a special law but it does not prescribe any period of limitation for a suit against a ward and as such section 29(2) of the Limitation Act, 1908 has no application to such a suit.³ There is no provision authorizing the Commissioner to have recourse to section 5 of the Limitation Act in connection with an appeal presented before him under section 66(2), of Income Tax Act. Section 66(2) of Income Tax Act contains no saving clause and gives neither the commissioner nor the High Court Division any power to condone delay if assessee does not present his application within the time prescribed.⁴ In view of the special limitation prescribed under the statute itself for filing an appeal from any judgment of a Special Tribunal there is no scope for admission of time barred appeal preferred under section 30 of the Special Powers Act condoning the delay on an application under section 5 of the Limitation Act⁵. Ordinance No.LI of 1983 is a special law and this special law prescribed a special period of limitation different from the First Schedule of the Limitation Act. In the face of well settled principle of law, the Appellate Election Tribunal committed an error of law occasioning failure of justice by applying section 5 of the Limitation Act to the appeal against the order of Election Tribunal.⁶

2. Sufficient Cause:

In order to have the advantage of the section 5, the applicant must show that he was prevented by sufficient cause from preferring application or appeal within the prescribed period of limitation. Sufficient cause means something beyond the control of the party. The words “sufficient cause” should be liberally construed. The petitioner must satisfy the court that he was not negligent and inactive. It must be considered that when the time of appeal has passed a valuable right has accrued to the successful litigant.⁷ The words “substantial cause” should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bona-fide is imputable to the applicant.⁸ While determining sufficient cause, the court should be lenient and should overlook some negligence that is an ordinary incident of human affairs, but gross negligence cannot be condoned.⁹

In determining sufficient cause while dealing with the same expression in Order IX, rule 8 and Order IX, rule 3 of CPC, the court had been lenient and had been condoning some negligence i.e. negligence to the extent to which it is regarded as human though they never condoned gross negligence. At the same time the court had always been strict in determining proof of sufficient cause for every day which had expired after the ordinary period of limitation.¹⁰

The section no doubt gives a wide discretion in determining what is sufficient cause, but the discretion has to be exercised judicially and not arbitrarily. Although the expression sufficient cause should be liberally construed so as to advance substantial justice, yet must be determined by a reference to the circumstances of a particular case.¹¹ Whether or there was sufficient cause for not coming to the within the prescribed period of Limitation Act is a question of fact which is to be determined keeping to view all the attendant circumstances.¹² The principle that substantial justice shall take preponderance over technical consideration should always be kept in view in deciding whether or not there is sufficient cause for the delay.¹³ The court must be fully satisfied as to the sufficiency of the cause and when an appeal is presented the court should exercise discretion guided by section 5.¹⁴ In the absence of any sufficient cause shown for condonation of delay of an inordinate delay of 1780 days in preferring the criminal appeal by the petitioner the High Court Division rightly rejected the petition under section 5 of the Limitation Act.¹⁵ Memorandum of appeal insufficiently stamped was presented within time with a prayer for extension of time to pay deficit court fee. Prayer for time rejected. Deficit court fee was

¹ 9 DLR 1957, 82.

² 27 DLR 1975, 418

³ 5 DLR 1953, 495

⁴ SH Mahmood vs Assistant Commissioner Income Tax, PLD 1951.

⁵ Mostafa vs State, 54 DLR 282

⁶ Md Iqbal Hossain vs Abdur Rab, 42 DLR 419

⁷ 8 DLR 167.

⁸ 16 CLJ 366.

⁹ 10 DLR (WP), 75.

¹⁰ Ata Ullah Malik vs Custodian of Evacuee Property 16 DLR (SC) 298

¹¹ Punjab Province vs Sultan Khan PLD 1959 Lahore 500 (DB)

¹² State vs Ghulam Shah PLR 1959 Lah.8

¹³ Abdul Kader Mondal vs Shamsur Rahman Chowdhury 51 DLR (AD) 253

¹⁴ 35 CLJ 106.

¹⁵ Abul Hossain vs State 1 BLC (AD) 40.

later on paid though out of time with a prayer under section 5 of the Limitation Act to condone the delay. Court in the circumstances of the case found that a reasonable case for condonation of delay has been made out.¹

Thus a sufficient cause can properly be said to be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which by due care and attention, whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention; in other words, whether it is a bona-fide cause, inasmuch as nothing shall be deemed to be done bona-fide or in good faith which is not done with care and attention.²

2.1 Illness of party:

A mere plea of sickness is not a sufficient cause. The question whether the effect of the sickness is such that it afforded sufficient cause is one of the facts to be decided in the circumstances of the particular case. Where medical certificate produced in support of application under section 5 of the Limitation Act, did not show that applicant-petitioner was in such serious condition that he could not call his counsel to his house for consultation or speak to him on telephone or could not send a person to enquire about progress of case.³

In *Sk. Md. Taritul Alam and another vs ATM Motiur Islam*⁴, it was observed that, the predecessor of the petitioners who were pursuing the litigations up to the stage of appeal seeking ejectment of the defendants from the suit premises died issueless after prolonged illness. His widow and only brother subsequently after becoming aware about the impugned judgment of the appeal took the steps to file revision, the learned judges of the High Court Division held there was sufficient cause and as such condoned the delay of 285 days in filling the revision. Where an appeal was filed 29 days after the expiry of limitation, it was held that it was not possible that owing to illness and old age the applicant was not in a position to do all that could have been possibly done for the prosecution of the matter. As the question involved in the appeal was of general importance, the court admitted the appeal.⁵

In *Messrs. Hashamally Bross vs Netherlands Trading Society*⁶ it was held that, the applicant ought to have produced the medical certificate along with the application where the applicant sought to get the appeal restored on the ground of illness and in any case should have produced it before the final hearing of the appeal.

Therefore, in order to get the privilege of the section 5, the applicant must show that he was unable to come before the court within the statutory period due to illness and he has to produce medical certificate with proper explanation.

2.2 Wrong but Bona-Fide Advice of the Lawyer:

In view of the facts and circumstances of the case it can be said that the mistake or oversight of the Tadbirkar or counsel of the petitioners is a sufficient cause within the meaning of section 5 of the Limitation Act and the petitioners are entitled to have an extension of time.⁷ Wrong advice by the counsel with due care and caution would be sufficient ground for exclusion of time but gross negligence of counsel cannot be ground for exclusion of time.⁸ Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice.⁹

In *Bhausahab jamburao vs Somobai*¹⁰ it was observed that where the delay in applying for copies is caused by the erroneous advice received by an applicant for leave to appeal to His Majesty in council from his advocate such mistaken advice of the law is a sufficient cause for excusing delay in making the application.

There is no authority for the view that a mistake of a legal practitioner in giving advice with regard to the time for filling an application for leave to appeal as a forma pauper is however gross and inexcusable if bona-fide acted upon by a litigant will entitle him to the protection of section 5 of the Limitation Act.¹¹ Under the Act nothing shall be deemed to be done in good faith which is not done with due care and attention and a pleader who gives wrong advice without reference to the law with regard to a matter of which he is ignorant cannot be said to have acted with due care and attention.¹² Where the party is not guilty of negligence, it can be good

¹ Abdul Hakim vs Asabuddin 20 DLR 506.

² Said Mahmud vs Goma etc. PLD 1952

³ PLD 1988 Kar.334

⁴ 12 MLR (2007) (HC) 137

⁵ PLD 1965 Karachi 621.

⁶ PLD 1961 Karachi 231 (DB).

⁷ Md .Ali Bhuiyan vs Idris Ali Bhuiyan. 21 DLR 910

⁸ 10 DLR(WP) 75.

⁹ Nitya Gopal Saha vs Binod Behari Saha 29 DLR 259

¹⁰ CPC AIR (33) 1946 Bombay 437

¹¹ 5 DLR 265.

¹² *Ibid*

ground for extension of time.¹ Wrong doubt may be sufficient cause within the meaning of section 5 of the Limitation Act, but negligent advice has never been and can never be a ground for extension of time.² Mistaken advice given by counsel is a good ground for extension if counsel does not act negligently, but the standard of care to be applied will depend on the particular circumstances of a case.³

In *Md Azeem vs Md Nawaz*⁴ it was held that, mistake committed by the learned counsel for the applicant in the present case could not be said to be so gross as to disentitle his clients from getting the benefit of section 5 of the Limitation Act for condoning the delay in the presentation of the appeal.

Mistaken advice of counsel is not a sufficient cause unless it is given in good faith.⁵ Mistaken advice of counsel who is not negligent is sufficient cause.⁶ The oversight of an advocate is a sufficient cause.⁷ Mistake of the clerk of the counsel is also a sufficient cause.⁸ Therefore, mistaken advice of a lawyer may no doubt constitute sufficient cause for condonation of delay in certain circumstances but once the normal period of limitation is allowed to run out, the applicant has to explain every day's of delay.⁹

2.3 Proceedings in Wrong Court:

Where the litigant and the counsel had acted with due care and caution and their conduct did not smack of negligence, the institution of appeal in wrong forum may constitute a sufficient cause within the meaning of section 5.¹⁰

In *Said Mohammad vs Goma*¹¹ it was held that, where there has been a bona-fide mistake regarding the filling appeal in wrong court, not through misconduct or through negligence nor through want of reasonable skill but such as a skilled might make, the client is entitled to indulgence and extension of time will be allowed.

*Bidhayet prova Devi vs Remandra Nath Chakravarty*¹² it was observed that, the petitioner through an honest and mistaken belief arising out of a wrong advice by a lawyer that his appeal lay in the court of the District Judge bona-fide filed the appeal in the Court and prosecuted it with due diligence and care, but the District Judge who had no jurisdiction to entertain the appeal instead of returning the memorandum of appeal for presentation to the proper court, dismiss the appeal. It was held that the order of the District Judge, who was without any jurisdiction to entertain the appeal, cannot operate as a legal bar to apply to the High Court for condoning the condoning the delay and for registering the appeal in the High Court.

Wrong proceedings taken in good faith is a good ground.¹³ Bona-fide prosecution of appeal in wrong court extends the period.¹⁴ If a wrong forum had been chosen due to mistaken advice, generally, the delay was condoned. Where, however, applicant himself had stressed that appeal before the wrong forum was rightly filed, which, in fact, was wrong, no benefit could be extended to the applicant in such circumstances¹⁵. Notwithstanding the fact that section 14 of the Limitation Act, in term, does not apply to proceedings of an appeal, if the applicant is able to establish that he followed the remedy before a wrong forum in good faith, the court may condone such delay in filling of the appeal treating same as 'sufficient cause' under section 5 of the Limitation Act.¹⁶

2.4 Non-Receiving the Copies of Judgment and Decree in Time:

Where the counsel genuinely thought that the period spent in obtaining copies as well as the period between the date of judgment and signing of the decree would be excluded from the period of limitation and therefore the appeal was filed a few days too late, this is a fit case where the delay in filling the appeal should be condoned under section 5 of the Limitation Act.¹⁷ When the rules of a High Court require an appeal to be presented along with a copy of the trial court's judgment, the delay in filling the appeal, insofar as it is covered by the time spent

¹ 5 DLR 265.

² .Allha Wasaye vs Muhammad Shakir, PLD 1958 Lahore 959

³ Food Stuff Supply Co vs Irfan Cotton Oil Mills, PLD 1958 Lahore 325

⁴ PLD 1961 Lahore 137.

⁵ 1938 Lah 81

⁶ .41 CWN 1189

⁷ 1931 Cal. 298.

⁸ 26 IC 68.

⁹ A Jalil vs Upendra Chandra Saha 45 DLR 381.

¹⁰ Abdul Majed vs Ghulam Haider 2001 SCMR 1254

¹¹ PLD 1952

¹² 7 DLR 272

¹³ 41 CWN 1189

¹⁴ 22 CWN 594

¹⁵ Muhammad Nawaz Khan vs Farrah Naz PLD 1999 Lah 238.

¹⁶ Abdul Wahid vs Sirajuddin 1998 SCMR 2296.

¹⁷ Federation of Pakistan vs ASPI PLD 1960 Karachi 562.

in obtaining a copy of the judgment, should ordinarily be condoned under section 5 of the Limitation Act.¹

In *Federation of Pakistan vs Munshi Muhammad Ismail*² it was said that, the appeal was filed in the court 36 days beyond the prescribed period but in the circumstances of this case we condoned the delay, because the period was spent in obtaining a copy of the judgment of the trial court.

In *Ansarul Hoque vs Bangladesh*³ it was held that, after obtaining the copy of the ex-party decree the matter was referred to the concerned ministry for necessary action for want of which the opposite party could not take step against the ex-party decree in time which was considered to be sufficient cause for condoning the delay of 73 days in filing the application for setting aside ex-party decree.

The time that elapses between the date of judgment and the signing of the decree is the time requisite for obtaining copy of the decree and that time should be excluded.⁴ Interval between the delivery of judgment and the signing of the decree must be excluded irrespective of the date of application.⁵ The time of delay caused by the officer of the court in granting copies should be excluded.⁶ Where copies are dispatched by post, time of transit is to be excluded.⁷ Time requisite to take the copies of both judgment and decree separately shall be deducted from the computation of period of limitation.⁸

2.5 Ignorance of Law:

Generally a mistake or ignorance of law is not a sufficient cause. It is often said that ignorance of law cannot be shown as excuse but ignorance of fact may be shown as excuse. It would be the shaking of established authority to maintain that ignorance of law or mistake of law are reasons for the excuse and as such, furnish elements for extending the period of limitation which the statutory law provided.

Ignorance of law unaccompanied by negligence in action or want of bona-fide may in proper cases be a sufficient cause, but section 5 of the Limitation Act was not provided to encourage negligence, procrastination and laxity.

In *Syed Barkurdar vs Syed Mathali Chowdhury*⁹ it was held that, ignorance of law accompanied by circumstances not indicating want of good faith or diligence may furnish as a sufficient ground for condonation of delay.

Ignorance of law is not a ground for extension of time but sufficient bona-fide cause exists, delay may be condoned.¹⁰ Therefore, ignorance of law accompanied by situations not indicating want of good faith may fit up sufficient ground for condonation of delay.¹¹

3. Condonation of Delay in Ex-party Decree:

It is the duty of a court not to pass any order behind the back of party which would adversely affect such party and the court is also obliged to correct own default, if any, by invoking his inherent power, both courts below erred in law resulting in an error in the decision occasioning failure of justice in holding that the delay in making the application under Order IX, rule 13 of the CPC could not be condoned in the absence of an application under section 5 of the Limitation Act.¹² As the trial was held in absentia and the petitioner was not aware of the criminal proceeding and he had been suffering from paralysis for a long time these were the sufficient causes for condoning the delay of 1930 days in preferring the appeal.¹³

In *Ansar Ali vs State*¹⁴ it was held that, where the trial was held in absentia and the sentence was seven years rigorous imprisonment, ends of justice will be met if the petitioner is given an opportunity to challenge the impugned judgment after condoning the delay of 1547 days in preferring the appeal.

In *Abdul Mannan vs State*¹⁵ the honorable Court observed that, the cause shown in the application for condoning the delay of four years nine months in filing the criminal appeal before the Sessions Judge is that a

¹ Md Iqbal Khan vs Notified Area Committee Kot Radha Kishan PLD 1957 Lahore 381.

² PLD 1956 Lahore 222.

³ 2 BLC 224

⁴ 20 CWN 967

⁵ 49 CWN 758

⁶ 3 CWN 55

⁷ 2 Lah.280.

⁸ 21 CWN 217

⁹ 25 DLR 203.

¹⁰ Province of East Pakistan vs Habibur rahman. 25 DLR 254

¹¹ Victory Wall Development Ltd vs Islami Bank Bangladesh Ltd.47 DLR 409

¹² Habibur Rahman vs MA Rasid 6 BLC 594

¹³ Abu Ali Chowdhury vs State 2 BLC 139

¹⁴ 3 BLC 68

¹⁵ 6 BLC 28.

salish was held between the parties where it was settled that the complainant would withdraw the case. As a result of which the petitioner did not attend the trial court. Ultimately the trial was held in absentia. Such cause as shown by the petitioner was not found as sufficient by Sessions Judge by the impugned order. Learned Sessions Judge could have examined the petitioner or complainant or any *salishder* about the matter. The petitioner may be given a chance to scrutinize his conviction and sentence after admitting his appeal for ends of justice.

Where the appeal against an ex party decree became time barred because the party spent some time in getting the ex-party proceedings set aside. If the attempt to get the proceedings set aside was bona-fide and were prosecuted with due diligence the time spent in it would be excluded.¹

4. Condonation with Regard to Government:

Law does not make any discrimination between the Government and a private litigant in respect of condoning the delay. Negligence of an agent or a servant of the Government is not a sufficient cause to condone the delay.² In the matter of condonation of delay Government does not enjoy any special privilege. The prayer from the side of the Government for condonation of delay should have considered with somewhat leniency, but not in the absence reasonable or close to satisfactory explanation for the delay.³ Government functionaries are not entitled for any preferential treatment so far as question of limitation for institution of proceedings is concerned and are treated at par with the other litigants.⁴ Where the Government, in spite of enormous resources and facilities at its disposal, continued to delay filling of cases in time detrimental to its own interest, opposite party could not be penalized for its negligence. Each day of limitation must satisfactorily be explained which petitioner had failed to do. Petition for leave to appeal being barred by 217 days and there being no sufficient ground for condonation of such delay, same must fail on ground of limitation.⁵

In *Bangladesh vs Joheruddin*⁶ it was held that, in matters of condonation of delay Government does not enjoy any special privilege, but the fact remains that due to the necessity to obtain opinions of various authorities concerned before filling an appeal, sometime may reasonably be expected to elapse which in the case of an individual does not happen. Some consideration in appropriate circumstances may therefore be extended to Government appearing as a litigant.

The court is to take into consideration various factors while deciding whether or not Government acted bona-fide or utterly on gross negligence in prosecuting its case and if the court comes to the conclusion that there has been no gross negligence on the part of the Government, the court should condone the delay.⁷ There is no doubt about the legal position that the law of limitation operates equally for or against the private party and also on the Government. The court is to consider in the case of the latter whether a Government department in question has acted bona-fide or has been grossly negligent in prosecuting its case and if the court finds that there has been no gross negligence the court should condone the delay disregarding the length of the delay.⁸

5. Condonation of delay and Discretion of the Court:

The existence of sufficient cause for not filling the proceeding in time is merely a condition that must be satisfied before the court exercises its power of granting or refusing to grant the extension of time. If the condition is not satisfied there is no room for the applicability of the power to excuse delay. Thus, where no cause has, at all, been shown that is, where no explanation has been given for filling the proceeding out of time, there arises no opportunity of considering the sufficiency or otherwise of the reasons for that fact, and there cannot be any room for the exercise of the discretion given by the section. If the condition is satisfied, then the court gets a discretionary power to grant or refuse the prayer for extension of time. It may in its discretion refuse to extend the time even though there may be sufficient cause for the delay. The extension of time is thus a matter of concession or indulgence to the applicant and cannot be claimed by him as a matter of absolute right.⁹ What is sufficient cause being a question of discretion, must depend on the circumstances of each particular case.¹⁰ Even in the absence of an application under section 5 of the Limitation Act, if the court satisfied from the materials on record including the application for substitution, the court can set aside the abatement and allow substitution

¹ Nasir Ahmad vs Karachi Municipal Corporation PLD 1960 Kar. 380.

² Province of East Pakistan vs Abdul Hamid Darjee 21 DLR 824.

³ Sonar Bangla Service Station vs Bangladesh 59 DLR (AD) 1.

⁴ Anoud Power Generation Ltd vs Federation of Pakistan PLD 2001 SC 340.

⁵ Central Board of Revenue, Islamabad vs Raja Industries(Pvt) Ltd: 1998 SCMR 307.

⁶ 5 BSCD 208

⁷ Bangladesh vs Soleman Bewya 47 DLR 244.

⁸ Iman Uddin Sheikh vs Deputy Commissioner (Rev) Bagerhat 47 DLR 329.

⁹ Said Muhammad vs Goma PLD 1952

¹⁰ 10 CLJ 39

accordingly.¹

In the case of *Khair ullah vs ADC (Revenue) State*² it was said that, considering the facts and circumstances the High Court Division exercised discretion in favor of the respondent for condonation of delay. In view of the aforesaid no illegality and wrong has been committed the High Court Division in exercising the discretion.

It is patent from the facts that the petitioners did not act negligently, rather they were diligent in filling the revisional application. In view of the facts, it will be just and proper to exercise our discretionary power to condone the delay in filling revisional application.³ Therefore, section 5 leaves it to the discretion of the court to admit an appeal after the expiry of limitation if it is satisfied that there was sufficient cause for delay. If the court bases its discretion on condoning delay, no wrong notion of law.⁴ An order extending time under section 5 should indicate that the discretion given by the law has been judicially exercised.⁵

6. Delay of every day must be explained:

According to the broad principle of law of limitation that, the vested right accrued to the other side after the prescribed period of limitation cannot be wiped out unless proper explanation is given thereof.⁶ If the prescribed period of limitation has expired, the person desiring the court to condone the delay must explain every day of the delay.⁷ Delay in filing an application for re-admission of appeal can be condoned where the Government gives satisfactory explanation and that there was substantial public interest involved.⁸ If the application is not bona-fide and the statements made in the application explaining the delay being mala-fide and far from satisfactory and tainted with suppression of facts, the petitioner is not entitled to get discretionary relief of the court.⁹ The statement explaining the delay made in the application does not give any opportunity to deviate from the long standing settled practice of our court to condone the inordinate delay.¹⁰

In the case of *M.Saleem Ullah vs Dhaka City Corporation represented by Mayor*¹¹ it appears that the opposite parties did not know exactly the correct number of the days of delay and the learned District Judge also failed to apply its judicial mind in finding out the exact number of days of delay in passing the impugned order. The learned District Judge committed an error of law in condoning the delay which was not sufficiently explained by the applicant- opposite parties as the exact number of days of delay was not correctly stated and that this has resulted in an error in the decision occasioning failure of justice.

In explaining the delay of 226 days in preferring the criminal appeal, it has been stated the petitioner was arrested on 23 November 2005 when for the first time he came to know about the conviction and sentence. He was never arrested any time before. It is contended on behalf of the petitioner that without taking steps for securing arrest of the petitioner, the trial was held in absentia and conviction and sentence were passed. The explanation given for the cause of delay appears to be satisfactory for which the delay was condoned.¹² If the explanation offered for condonation of delay does not smack of mala-fide the court must show utmost consideration to the suitor. In *Nand Kishore vs State of Punjab*, the Supreme Court of India under peculiar circumstances of the case condoned the delay in approaching the court after about 31 years. In *N. Balakrishnan vs M.Krishna Murthy*, Supreme Court of India held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for general welfare. In *Nazim vs State*¹³ the court held that the petitioner has shown sufficient cause for condoning the delay as his explanation for such delay appears to be satisfactory, bona-fide and genuine. Thus, the High Court Division has condoned the delay of 4968 days in preferring the appeal. The question is not the days of delay; it is the manner and bona-fide how the delay is explained.¹⁴

Where the court before exercising the power under section 5 of the Limitation Act feels satisfied upon the facts of the case under consideration that the explanation given for the delay is sufficient, the discretion under

¹ Hazi Habibur Rahman vs Aayub Ali Sawdagar 58 DLR (AD) 223

² 54 DLR (AD) 13.

³ Sk Md Tarikul Alam vs ATM Matiul Islam 58 DLR 425

⁴ Bombay Cloth House vs Commissioner of Income Tax PLD 1954 Lahore 50.

⁵ 1932 Cal. 482

⁶ Province of East Pakistan vs Md Habibur Rahman 25DLR 254.

⁷ Md Ghazanfar vs Nur Basar PLD 1952 Lahore 156.

⁸ Abul Kashem vs Bangladesh 56 DLR (AD) 218.

⁹ Government of Bangladesh, represented by the SP vs Md Moslehuddin Ahmed 10 BLC 304.

¹⁰ Afzal Molla vs Bangladesh 57 DLR 586

¹¹ 9 BLC 12

¹² Jahangir Alam vs State 11 BLC 537

¹³ 13 BLC 353.

¹⁴ Additional Deputy Commissioner (Rev.) vs Md Khairullah 49 DLR 472

this section should be exercised and the court should take a liberal view in considering the cause shown by the applicant.¹

7. Negligence cannot be shown as a sufficient cause:

Under section 5 of the Limitation Act the petitioner is entitled to condonation of delay, if he can satisfy the court that he had sufficient cause for not making the application within the period fixed the Statute. The petitioner must also satisfy the court that he was not negligent and inactive.² A party wishing to take advantage of section 5 of the Limitation Act must, therefore, satisfy the court that it had not been negligent and had been prosecuting its case with due diligence and care.³

*In Allah Wasaya and other vs Md Shakir*⁴ it was held that, negligence of the counsel is the negligence of the party, because he is the agent of the party. If the negligence of counsel was to be condoned appeals which are not filed through counsel's negligence would never become time barred and in cases where a dismissal in default would have to be restored.

Negligence of the pleader's agent is the negligence of the pleader and consequently cannot extent the period.⁵ The question of excusing delay has to be approached from the point of view of the petitioner's conduct. The Court has no jurisdiction to extend time where the petitioner has been negligent and inactive.⁶

In the case of *Shomurunessa vs Md Musa Miah*⁷ it was observe that, it appears from the application that the reasons for the delay was narrated and explained in a very slipshod general manner giving rise to forming the opinion that the delay was due to the laches and gross negligence on the part of the petitioner. There is no ground for condonation.

More than one year and nine months was consumed to start a part file and the leave petition was filed out of time by 1340 days. Such gross negligence and inordinate delay on the part of Solicitor Wing should not be condoned otherwise the officers of the Solicitor Wing will be encouraged to be more irresponsible and negligent in their official duties.⁸

Conclusion

Thus we may come to the conclusion from the above discussion that law of limitation and condonation of delay are two effective implementations in the quick disposal of cases and effective litigation. The law of limitation keeps a check on the pulling of cases and prescribes a time period within which the suit can be filed and the time available within which the person can get the remedy conveniently. There has to be a balance between the rights of the applicant who files an application after the limitation expires and the rights acquired by the other party on such delay The law of condonation of delay keeps the principle of natural justice alive and also states the fact that different people might have different problems and the same sentence or a singular rule may not apply to all of them in the same way. Thus it is essential to hear them and decide accordingly whether they fit in the criteria of the judgment or whether they deserve a second chance. The court should have applied its discretions in furtherance of justice but these discretions also should not override the principle that "Justice delayed is justice denied".

¹ Emarat Ali vs State 57 DRL 620

² Amir Hossain vs Kasim and Ismail Ltd 8 DLR 167 (DB)

³ .Punjab Province vs Sultan Khan PLD 1959.

⁴ PLD 1948 Lahore 959.

⁵ 1927 Pat 232,101 IC 448.

⁶ Bangladesh vs Abdul Wahab 45 DLR 30

⁷ 58 DLR 228

⁸ Bangladesh vs Alauddin 6 BLC (AD) 101