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HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No.41 of 2013**

Municipal Corporation, Raipur Through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Ramrao Sendre S/o Late Shri N.G. Sendre R/o Near Deepak Kiraya Bhandar, Adjacent To Nitesh Atta Chhakki, Lakhenagar, Raipur, Chhattisgarh
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- Respondents**Review Petition No.42 of 2013**

Municipal Corporation, Raipur, through the Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Vimal Chandra Jain S/o Heera Lal Sahu R/o Near Raipur Convent School, Ashwani Nagar, Raipur, Chhattisgarh
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- Respondents**Review Petition No.43 of 2013**

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Mukund Lal Dewangan S/o Late Shri Mehattrlal Dewangan R/o New Hanuman Nagar, Near Durga Temple, Lakhenagar, Raipur, C.G.
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- Respondents

Review Petition No.44 of 2013

Municipal Corporation, Raipur, through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- **Petitioner**

versus

1. Laxminarayan Sahu S/o Late Heeralal Sahu R/o Near Raipur Convent School, Ashwani Nagar, Raipur, Chhattisgarh
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- **Respondents**

Review Petition No.45 of 2013

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- **Petitioner**

versus

1. Vimal Kumar Phutan S/o Late Lalu Ram Phutan R/o Near Raipur Convent School, Ashwani Nagar, Raipur (C.G.)
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- **Respondents**

Review Petition No.46 of 2013

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- **Petitioner**

versus

1. Raghvendra Rai S/o Ishwari Prasad Rai R/o Rai Sellers Corporation, Telghani Naka, Raipur, C.G.
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (2) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (2) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- **Respondents**

Review Petition No.47 of 2013

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- **Petitioner**

versus

1. Dipak Kumar Shrivastava S/o Late Shri Rupkishore Shrivastava R/o LIG- 498 & 499, Tatibandh, Raipur (C.G.)
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, Chhattisgarh

---- Respondents**Review Petition No.48 of 2013**

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Dinesh Tiwari S/o Shri Lalmani Tiwari R/o Laxminarayan Kala Bhandar, Ramsagar Para, Raipur, C.G.
2. Rajesh Upadhyay, Sarpanch (Appointed U/s 387 (2) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur, Chhattisgarh
3. Vimal Chandra Jain Panch (Appointed U/s 387 (2) of The C.G. Municipal Corporation Act, 1956) R/o House of Sanat Tiwari, Adjacent to Ghanshyam Sweets, Ashwani Nagar, Raipur, C.G.

---- Respondents**Review Petition No.49 of 2013**

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Motilal Dewangan S/o Shri M.N. Dewangan R/o Near Mukut Nagar, Behind Water Tank, Raipur, C.G.
2. Rajesh Upadhyay Sarpanch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur (C.G.)
3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur, C.G.

---- Respondents**Review Petition No.50 of 2013**

Municipal Corporation, Raipur through The Commissioner, Municipal Corporation, Raipur, Chhattisgarh

---- Petitioner**versus**

1. Jitendra Kumar Wadhwani S/o Late Shri Vishnumal Wadhwani R/o D-432, Tagore Nagar, Raipur, C.G.
2. Rajesh Upadhyay Sarpanch (Appointed U/s 387 (3) of The Municipal

Corporation Act, 1956) Advocate, Chamber No. 5, District Court, Raipur (C.G.)

3. Dinesh Tiwari Panch (Appointed U/s 387 (3) of The Municipal Corporation Act, 1956), S/o Shri Lalmani Tiwari, R/o Ramsagarpara, Raipur C.G.

---- Respondents

For Petitioner	:	Shri H.B. Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate
For Respondent No.1	:	Ms. Sharmila Singhai and Shri Devershi Thakur, Advocates in all the Review Petitions except in Review Petition No.47 of 2013

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice Prashant Kumar Mishra

Order on Board

Per Navin Sinha, Chief Justice

30/10/2015

1. In all these review applications, there is a delay of approximately 743 days for which separate interlocutory applications have been filed.

2. We have heard Learned Counsel on the applications for condoning delay. Originally, pursuant to observations in Writ Petition No.4909 of 2008 compensation claims were preferred by the Respondents under Section 387(2) of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called 'the Act'). The award dated 18.5.2008 was challenged by the Petitioners before the District Judge, Raipur in Arbitration Case No.54A of 2008. On 7.7.2010, the District Judge held that the applications were not maintainable under Section 34 of the Arbitration Act, 1996. The Petitioners preferred Arbitration Appeals against the same which were dismissed on 20.1.2011 as not maintainable with liberty to pursue appropriate remedies in law. The Civil Revision applications filed thereafter by the Petitioners were permitted to be withdrawn on 26.11.2012 with liberty to file applications for review of order dated 20.1.2011 and thus the review applications.

3. It is therefore evident that the Petitioners have been vigilant throughout and have been pursuing such remedies as they have been advised from time to time and granted liberty by the Court also to pursue appropriate remedy when the remedy being pursued was not appropriate. The Court is further satisfied that the questions arising for consideration with regard to the scope of Section 387 of the Act are of general public importance. Also involved is the question of public money that may have to be paid to the Respondents as compensation. We are constrained to observe that the application for condonation of delay is very casual and does not contain any explanation worth the name. Yet having examined the issues, we shall be failing in our duty if the review applications were to be dismissed mechanically on that ground which may possibly result in laying down of the law which appears to need re-examination. There can be no pedantic approach for condoning delay merely based on the number of days. All relevant facts and circumstances must be considered together. We are satisfied that in the facts of the case, the interest of justice requires delay be condoned. We order accordingly.

4. In (2013) 12 SCC 649 (Esha Bhattacharjee v. Raghunathpur Nafar Academy) the principles formulated from judicial precedents have been thus elucidated :-

“21. 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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and

pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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 delineation.

21.9. (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.

21.10. (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.”

5. The review applications arise from a common order dated 20.1.2011 dismissing Arbitration Appeals No.27 of 2010, 28 of 2010, 29 of 2010, 30 of 2010, 31 of 2010, 32 of 2010, 33 of 2010, 34 of 2010, 35 of 2010 and 36 of 2010.

6. We have heard Learned Counsel for the parties. The Petitioners had aptly raised the issue before the District Judge that the nomenclature of the application was not relevant, but the substance had to be seen. Once the District Judge accepted the submission, he could not have gone back to the

three months period required to challenge the award and dismissed the case on the ground that no sufficient explanation for delay and relevant dates had been mentioned.

7. We are also satisfied that these review applications are raising serious questions with regard to the scope and purport of Section 387 of the Municipal Corporation Act which is required to be decided in the larger public interest and which also concerns the finances of the Corporation which deals with public money.

8. The review applications are therefore allowed and Arbitration Appeals No.27 of 2010, 28 of 2010, 29 of 2010, 30 of 2010, 31 of 2010, 32 of 2010, 33 of 2010, 34 of 2010, 35 of 2010 and 36 of 2010 are restored to file for fresh hearing.

9. Pending disposal of the arbitration appeals, further proceedings in Execution Cases No.80 of 2008, 95 of 2007, 43 of 2010, 93 of 2007, 96 of 2007 and 44 of 2010 pending before the District Judge, Raipur shall remain stayed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Prashant Kumar Mishra)
JUDGE