

Mir v. State of J&K and others, and for setting-aside the same on the grounds tailored therein.

2. We have heard learned counsel for parties. We have gone through the writ record as also judgement impugned and considered the matter.
3. Perusal of the file reveals that a writ petition, being OWP no.1509/2013, preferred by respondent no.1 herein, came to be dismissed for non-prosecution vide Order dated 18th November 2014. As there had been delay in filing a motion for restoration of writ petition, the writ petitioner/respondent no.5 moved an application for condoning delay in preference thereof. Respondent no.5 before the learned Single Judge – appellant herein objected Condonation of Delay Application as according to appellant there was not any sufficient cause coming forth from the application which presupposed that there was no negligence or inaction on the part of respondent no.1/writ petitioner. The learned Single Judge vide judgement/order impugned allowed the application, condoning delay in filing restoration application. Hence this appeal.
4. It is vehement contention of counsel for appellant that there was no sufficient ground raised by respondent no.1 in his application for condoning delay inasmuch as there is no ground that when and on which date, respondent no.1 tried to contact his counsel and when and on which date he got the information about his counsel having been engaged as a government advocate. Counsel for appellant also avers that law of limitation being a substantive law. Appeals and

applications are to be preferred within a period of limitation and condoning delay is only an exception. According to counsel for appellant, the grounds taken by respondent no.1 in his application for condoning delay appear to be cock and bull story. He also avers that there was inordinate delay in approaching the learned Single Judge for restoring the writ petition, more particularly when explanation offered in the application by respondent no.1 is concocted and grounds urged therein are fanciful. His further contention is that learned Single Judge has not considered the matter in its right and proper perspective and has not appreciated the yardsticks laid by the Supreme Court while condoning the delay. He in support of his contentions has placed reliance on a judgement dated 22nd August 2017 passed by the Division Bench of this Court in COD(LPA) no.181/2017 titled as *State of J&K and others v. Sarwar Ahmad*.

5. *Per contra*, counsel for respondent no.1 has stated that there is no infirmity in the order impugned as the learned Single Judge has taken into consideration all aspects of the matter while passing order impugned. She in support of his submissions has placed reliance on a judgement of the Supreme Court in *Collector, Land Acquisition, Anantnag and another v. Mst Katiji and others, (1987) 2 SCC 107*.
6. The learned Single Judge, while allowing application of respondent no.1 to condone delay, has imposed Rs.2000/- as costs to be paid by respondent no.1 to appellant. The learned Single Judge while passing order impugned has relied upon law laid down by the Supreme Court in the case of *Mst Khatiji* (supra). The Supreme

Court has said that refusing to condone delay can result in a meritorious matter to be thrown out at the very threshold and cause of justice defeated. By contrast with this, when delay is condoned the highest which can come about is that a cause would be decided on merits after hearing the parties.

7. As has been held by the Supreme Court “every day’s delay must be explained” does not mean that a pedantic approach should be made and that when substantial justice and technical considerations are pitted against each other, cause of substantial deserves to be preferred for the other-side cannot claim to have vested right in injustice being done because of non-deliberate delay. After saying this, the Supreme Court also held that there is no presumption that delay is occasioned deliberately or on account culpable negligence or on account of *mala fides*, in that a litigant does not stand to benefit by resorting to delay and in fact he runs a serious risk.
8. It is well settled that the word ‘sufficient cause’ should receive liberal construction and acceptability of explanation is the criteria, and not length of delay. In every case of delay, there can be some lapse on the part of litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of *mala fides* or does not put forth as part of dilatory strategy, the Court must show utmost consideration to the suitor.
9. We find from the facts contained in the Application for condonation of delay filed by respondent no.1 and the order impugned passed thereon by the learned Single Judge, that the contentions raised in the

application were not *mala fide*. In our considered view, having regard to the totality of the facts and circumstances of the case and cause shown by respondent no.1, the learned Single Judge has rightly allowed the application of respondent no.1 as sufficient cause within the meaning of Section 5 of the Limitation has been shown by respondent no.1 for condoning the delay in filing application for restoration of writ petition.

10. The judgements relied upon by the counsel for appellant do not offer any aid and assistance to the case of appellant.

11. In view of the foregoing discussion, the appeal is without any merit and is, accordingly, **dismissed**.

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Srinagar

31.08.2023

Ajaz Ahmad, PS

Whether approved for reporting? Yes/No

