

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Second Appeal No. 68 of 2018**

M/s Zaz Sons Export Pvt. Ltd and Another Appellants

Vs.

Akhil Kumar Gupta Respondent

Present:

Dr. Menaka Guruswamy, Senior Advocate (through video conferencing) assisted by Mr. Siddharth Singh and Mr. Hardik Sah, Advocates for the appellants.

Mr. S.K. Jain, Senior Advocate assisted by Mr. Divyam Sharma, Advocate holding brief of Mr. Siddharth Jain, Advocate for the respondent.

JUDGMENT**Hon'ble Ravindra Maithani, J. (Oral)**

The present second appeal is preferred against the following:-

- i) The judgment and decree dated 03.04.2005, passed in Original Suit No. 455 of 1995, Akhil Kumar Gupta v. M/s Zaz Sons Export Pvt. Ltd. and Another by the court of 3rd Additional Chief Judicial Magistrate, Dehradun ("the suit"); and
- ii) The order dated 01.10.2014, passed in R.M. No.745 of 2005, M/s Zaz Sons Export Pvt. Ltd. and another v. Akhil Kumar Gupta ("the Misc. case"), by the court of VI Additional District Judge, Dehradun.

2. Heard learned counsel for the parties and perused the record.

3. The record reveals that the respondent filed the suit for recovery of Rs. 85,868.65/- along with interest against the

appellants. This suit was decreed on 03.04.2001. The appellants proposed to prefer an appeal challenging the judgment and decree dated 03.04.2001 passed in the suit, but it was delayed. Therefore, a delay condonation application under Section 5 of the Limitation Act, 1963 ("the Act") was filed by the appellants along with the memo of appeal. It is the basis of the Misc. case.

4. The respondent did file objections to the delay condonation application. By the impugned order dated 01.10.2014, passed in the Misc. case, the application under Section 5 of the Act filed by the appellants has been dismissed. It is challenged in this appeal.

5. Before we proceed further, it would be apt to record, at this stage itself, that the delay condonation application was filed by the appellants on the ground that the deponent was suffering from heart disease since 1995, and he was completely bed ridden since 1999. It was so stated in Para No.2 of the affidavit filed by the appellant no.2, Tahir Hussain, which further records that the medical certificate is also enclosed as Annexure No.1 to the affidavit. One of the grounds that were taken for delay condonation was that the earlier counsel of the appellants, Mr. M.P. Awasthi, had passed away on 15.04.2001, and since the appellant no.2, Tahir Hussain, was bed ridden, he could not pursue the matter in the court at Dehradun.

6. The respondent did file his objections along with the affidavit, and all these facts were denied. With regard to the death of Advocate Mr. M.P. Awasthi, it was recorded in Para No.4 of the affidavit that, **"It is wrong, false and denied that the expiry of Shri M.P. Awasthi, Advocate has anything do with the decree or the delay in preferring the appeal."** The factum of illness has also been denied. The memo of appeal along with delay condonation application was filed on 19.10.2005.

7. Initially, when the appeal was taken up, substantial questions of law were not framed. Subsequently, three questions of law were framed on 26.11.2019. This Court need not reproduce them for the simple reason that they were substituted by the questions of law that were framed by the Court on 01.05.2025. They are as below:-

- “(i). Whether the First Appellate Court adopt a liberal approach in considering application for condonation of delay on ground of substantial cause under Section 5 of the Limitation Act?
- (ii). Whether dismissal of the First Appeal as barred by time amounts to confirmation of the decree passed by the trial Court, if no, what would be the effect?
- (iii). If order of the First Appellate Court amounts to the confirmation of the decree then whether the interest as awarded by the trial Court was in conformity with the provision of “The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993”, (Act No.32 of 1993).”

8. Not only this, subsequent to it, one more question of law was framed by this Court on 29.10.2025, which is as below:-

- “(iv) Whether the Civil Court at Dehradun had jurisdiction to entertain the suit in view of the Purchase Order conferring exclusive jurisdiction on the courts at Kanpur.”?”

9. Learned Senior Counsel appearing for the appellants submits that the first appellate court ought to have taken a very liberal view while considering the delay condonation application, but it was not so done, which resulted in the rejection of the delay condonation application, as a consequence of which the judgment and decree passed by the trial court has been confirmed; if liberal approach in such matter is not taken, it causes substantial loss to a party.

10. In support of her arguments, she would refer to the principles of law, as laid down by the Hon’ble Supreme Court in the case of N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC

123, to argue that the Court should take a very liberal approach while considering the delay condonation application.

11. In the case of N. Balakrishnan (*supra*), the Hon'ble Supreme Court, in Para No.12 of the judgment, observed as hereunder:-

“12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, AIR 1969 SC 575 and *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366.”

12. She further submits that the phrase “sufficient cause”, as given under Section 5 of the Act, should get a liberal construction.

13. On behalf of the respondent, learned Senior Advocate submits that in the instant case, no cause has been shown for delay in filing the appeal; the appellant no.2 write in his affidavit that he was unwell, but the medical certificate has not been filed; the death certificate of the lawyer has also not been filed.

14. In support of his contention, learned Senior Counsel for the respondent has relied on the principles of law, as laid down in the cases of *State of U.P. and another v. Hari Shanker Dubey*, 2002 SCC OnLine All 44, and *Basawaraj and Another v. Special Land Acquisition Officer*, (2013) 14 SCC 81.

15. In the case of *Hari Shanker Dubey (supra)*, in Paragraph Nos. 3, 4 and 5, the Hon'ble Allahabad High Court observed as follows:-

“3. It is true that the application filed under Section 5 of the Limitation Act is to be liberally construed but such interpretation on liberally has to be made on the basis of the materials disclosed. If no material

is disclosed, it is not possible to construe the petition liberally because very valuable rights of the other party are involved and the same cannot be ignored.

4. In the above facts and circumstances of the case the application filed under Section 5 of the Limitation Act is dismissed with the aforesaid observations.
5. Since the delay condonation petition has been dismissed, the special appeal itself stands dismissed and the same need not be registered and shall be taken out of the file of this Court.”

16. In the case of Basawaraj (*supra*), the Hon’ble Supreme Court summarised the principles of sufficient cause in Paragraph No.15, and observed as hereunder:-

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

17. Undoubtedly, when a litigation is stopped on the ground of delay, it does not permit the parties to contest the case on merits. Its effects are always left open.

18. In the case of Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others, (1987) 2 SCC 107, the Hon’ble Supreme Court has discussed these principles, and in Para 3 of the judgment and observed as below:-

“3. The legislature has conferred the power to condone delay by enacting Section 5 [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.] 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 meaningful 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:

“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 condoned 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 risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

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19. This Court proceeds to decide the first substantial question of law, which is as below:-

“(i). Whether the First Appellate Court adopt a liberal approach in considering application for condonation of delay on ground of substantial cause under Section 5 of the Limitation Act?”

20. It has been the case of the appellants that after passing of the judgment and decree on 03.04.2001 in the suit, the lawyer representing the appellants, Mr. M.P. Awasthi, Advocate, passed away on 15.04.2001. Therefore, on time, appeal could not be filed.

21. Another ground that has been taken in the affidavit accompanying the delay condonation application is that the appellant no.2 was unwell since 1995. A medical certificate dated 24.09.2005 of one Zahid Hussain has been filed, which was issued by Prof. S.C. Manchanda, Senior Consultant Cardiologist, Sir Ganga Ram Hospital, New Delhi.

22. Learned Senior Counsel appearing for the respondent has two fold objections to it. According to him, as per affidavit accompanying the delay condonation application, it is the appellant Tahir Hussain, who was unwell. But his medical certificate has not been filed, and second, there is no death certificate of Mr. M.P. Awasthi, Advocate.

23. In reply to it, learned counsel for the appellants submits that the point no.2 in the affidavit of Tahir Hussain accompanying the delay condonation application, it is categorically stated that the medical certificate of the deponent is enclosed; in fact, it was a typographical error; it is not the appellant Tahir Hussain, who was suffering with cardiac disease. It is his father, Zahid Hussain, who was suffering with cardiac disease, and accordingly, the medical certificate of his father was

enclosed, and this has been strictly read by the first appellate court, and a genuine interpretation has not been given to it.

24. Insofar as the death of Mr. M.P. Awasthi, Advocate, is concerned, it is argued that it is not denied by the respondents. In fact, in Para No.4 of their affidavit, they record that it has nothing to do with the delay condonation application.

25. The appellant no.2, Tahir Hussain, in his affidavit writes that he was unwell for a long and a medical certificate was enclosed. In fact, the medical certificate is of Zahid Hussain, who, it is stated, is the father of the appellant Tahir Hussain. Both documents ought to have been read together to give a life to both of them, which was not done in the instant case. A liberal approach has not been taken. In fact, a much pedantic approach has been taken.

26. Insofar as the death certificate of Mr. M.P. Awasthi, Advocate, is concerned, at times it would be considered too much to ask from a party to file the death certificate, particularly, when the factum of death has not been denied.

27. In the instant case, it has been the case of the appellant no.2, Tahir Hussain, that his lawyer expired on 15.04.2001, and this fact is not denied.

28. At the cost of repetition, it may be reiterated in Para No.4 of his affidavit accompanying the objections, the respondent has stated that, "It is wrong, false and denied that the expiry of Shri M.P. Awasthi, Advocate has anything do with the decree or the delay in preferring the appeal." It has much to do because the trial court has delivered the judgment and decree on 03.01.2001. If on 15.04.2001, the lawyer of the appellants had died, it cannot be said that it has nothing to do with the preferring appeal.

29. Having considered, this Court is of the view that, in fact, the court below has not taken a liberal approach in considering the application for condonation of delay. The application for condonation of delay ought to have been allowed. Accordingly, the order dated 01.10.2014, passed in R.M. No.745 of 2005, M/s Zaz Sons Export Pvt. Ltd. and another v. Akhil Kumar Gupta, by the court of VI Additional District Judge, Dehradun, is liable to be set aside.

30. The order dated 01.10.2014, passed in R.M. No.745 of 2005, M/s Zaz Sons Export Pvt. Ltd. and another v. Akhil Kumar Gupta, by the court of VI Additional District Judge, Dehradun, is set aside

31. The delay condonation application is allowed. The matter is remanded to the first appellate court to decide the appeal on merits.

32. The first substantial question of law is decided accordingly.

33. On the second substantial question of law, learned counsel for both the parties are in agreement that dismissal of first appeal, as barred by time, amounts to confirmation of decree. In fact, this second substantial question of law does not require any deliberation. It is an accepted phenomenon.

34. The third and fourth substantial questions of law touch the merits of the case. Since, while recording the finding on the first substantial question of law, this Court has already remitted the matter for decision afresh on merits to the first appellate court, there is no occasion to record any finding on the third and fourth substantial questions of law.

35. The second appeal is decided accordingly.

36. The parties shall appear personally or through their respective Advocates before the court of District Judge, Dehradun on 04.08.2026.

(Ravindra Maithani, J.)
09.07.2026

Ravi Bisht