DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI

Appeal No.227/2026
Arising out of O.A. No.159/2025 (DRT-II, Delhi)

Item No.5

M/s Shirin Foods Limited & another
V.
State Bank of India & another

01.10.2026 Hon'ble Dr. Justice Sudhir Kumar Jain

Present: Sh. Puru Gupta, Advocate for the appellants through VC

This matter is taken up through Hybrid hearing.

ORDER (ORAL)

I.A. No.1078

1. The instant application is filed for condonation of 2454 days' delay in filing the present appeal.

2. The respondent no.1 filed O.A. bearing no.159/2015 titled as **State Bank of India V. Shirin Foods Limited & another** in which the appellant no.1 arrayed as the defendant no.1 and the said O.A. was stated to be pending before DRT-II, Delhi. The defendants, including the appellant no.1, were ordered to be proceeded *ex parte* vide order dated 30.10.2025. DRT-II, Delhi vide judgment dated 16.11.2026 allowed the O.A. and held that the respondent no.1 is entitled to recover a sum of Rs.5,18,95,107/- along with interest as mentioned in para 8 of the judgment besides passing various other directions. Thereafter, the appellant no.1 and other defendants filed M.A. bearing no.06/2017 for setting aside the *ex parte* decree which was ordered to be dismissed in default vide order dated 11.09.2017 (herein after referred to as '**the impugned order)** by DRT. The impugned order dated 11.09.2017 is reproduced as under:-

> **"No representation for the applicant in MA. Counsel for the SBI present and reported ready. Since there is no representation for the Misc. application. Hence, the MA is hereby dismissed for default**
>
> **File be consigned to record room."**

3. The appellants were arrayed as the defendants 1 and 2 in the O.A. The appellants filed the present appeal on 09.07.2026 which was ordered to be listed on 10.08.2026 after removal of defects. The present appeal, as per the appellant, is stated to have been filed with a delay of 2454 days but as per the report of the Registry there is a delay of 3192 days.

4. It is stated in the application that the appellants were the defendants 1 and 2 in the O.A. and were proceeded *ex parte* vide order dated 30.10.2015. The final judgment in the O.A. was passed on 16.11.2016. The appellants also filed I.A. bearing no.860/2015 before DRT for recalling the *ex parte* order dated 30.10.2015 which was allowed vide order dated 29.01.2016 subject to the cost of Rs.1 lac to be adjusted towards the outstanding dues. However, the defendants, including the appellants, did not comply with the said order to deposit Rs.1 lac due to financial constraints even after lapse of almost four months and written statement was also not filed. In the circumstances, DRT revived the order dated 30.10.2015. The appellants also filed a Misc. Application bearing no.06/2017 for setting aside the *ex parte* order which was dismissed in default on 11.09.2017.

5. It is also stated that the father of the appellant no.2, namely, Late Mohd Yusuf Ahmed used to take care of the matter and due to his ill-health he could not look after the prosecution of the Misc. Application bearing no.06/2017 which was consequently got dismissed in default vide the impugned order dated 11.09.2017. It is also stated that the Misc. Application 06/2017 was dismissed solely due to non-appearance of the counsel representing the applicants and the applicants had never instructed the said counsel to withdraw from the matter and stop appearing before DRT. The appellants were pursuing their legal remedies diligently and the Misc. Application bearing no.06/2017 was got dismissed due to the circumstances beyond the control of the appellants, but not due lack of diligence. The father of the appellant no.2 expired on 10.04.2019 and the appellant no.2 being resident of Kolkata was not able to look after the case after the demise of his father. Thereafter the entire country was affected by COVID-19 pandemic and because of consequent restrictions the appellants could not pursue their legal remedy effectively. The appellants received the sale proclamation dated 19.08.2023 issued by the Recovery Officer and thereafter, on enquiry, came to know about the dismissal of the Misc.

Application bearing no.06/2017. The delay was neither deliberate nor intentional. It is prayed that the delay in filing the present appeal be condoned.

6. Section 20 of the Act deals with appeal to the Appellate Tribunal. It provides that any person aggrieved by an order made by a Tribunal may prefer an appeal before the Appellate Tribunal and that appeal has to be filed within a period of 30 days from the date of the order. However, the Appellate Tribunal may entertain the appeal after the expiry of 30days if there is sufficient cause to the satisfaction of the Appellate Tribunal for not filing the appeal within the period of limitation.

7. The Supreme Court of India in **Pathapati Subba Reddy (Died) by L.Rs. & others V. The Special Deputy Collector (LA)**, Special Leave Petition (Civil) No.31248/2018 decided on 08.04.2024, after referring **Collector, Land Acquisition, Anantnag & others V.Katiji & others,** (1987) 2 SCC 107 held as under:-

> **"16. ...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 days 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 and if the delay is not deliberate, it out to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condonoing the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of section 5 of the Limitation Act.**
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> **17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights."**

8. The Supreme Court in case of **Shiv Amma (dead) by LRs. V. Karnataka Housing Board & others,** Civil Appeal No.11794/2025 defined the phrase 'sufficient cause' under Section 5 of the Limitation Act and observed as under:-

> **"B. <u>What is to be understood by "sufficient cause" in Section 5 of the Limitation</u>.**
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> **116. As already discussed in the foregoing parts, for the purpose of seeking condonation of delay under Section 5 of the Limitation Act, the party has to demonstrate the existence of a "sufficient cause" "within the prescribed period" to the satisfaction of the court. Thus, establishment of "sufficient cause" is the first ingredient for the purpose of condonation of delay. Insofar, as what is meant by the phrase "sufficient cause", neither Section 5 nor the Limitation Act itself provide any guidance on what its constituent elements ought to be. Instead, Section 5 leaves the task of determining appropriate reasons for seeking condonation of delay to judicial interpretation and exercise of discretion upon the facts and individual circumstances of each case.**
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> **117. While there is no arithmetical formula, through decades of judicial application, certain yardsticks for judging the sufficiency of cause for condonation of delay have evolved. Mere good cause is not sufficient enough to turn back the clock and allow resuscitation of a claim otherwise barred by delay. The court ought to be cautious while undertaking such an exercise, being circumspect against condoning delay which is attributable to the applicant. Although the actual period of delay might be instructive, it is the explanation for the delay which would be the decisive factor.**
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> **118. The court must also desist from throwing the baby out with the bathwater. A justice-oriented approach must be prioritised over technicalities, as one motivation underlying such rules is to prevent parties from using dilatory tactics or abusing the judicial process. Pragmatism over pedanticism is therefore sometimes necessary, despite it appearing liberal or magnanimous. The expression "sufficient cause" should be given liberal construction so as to advance substantial justice.**
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> **119. 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. Despite the liberal approach being adopted in such matters, which was termed justifiable, this Court lamented that the message had not percolated down to all the other courts in the hierarchy and, accordingly, emphasis was laid on the courts adopting a liberal and justice-oriented approach. [See: Sheo Raj Singh v. Union of India, (2023) 10 SCC 531]**
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> **120. 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**

acceptable. 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. [See: Sheo Raj Singh v. Union of India, (2023) 10 SCC 531]

121. This Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649, after examining a plethora of decisions on what is meant by "sufficient cause", summarized its principles as under:—

> **"21. From the aforesaid authorities the principles that can broadly be culled out are:**
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> **21.1. (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.**
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> **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.**
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> **21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.**
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> **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.**
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> **21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.**
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> **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.**
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> **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.**
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> **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.**
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> **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.

21.11. (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.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

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

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2. (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.

22.3. (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.

22.4. (d) The increasing tendency to perceive delay as a non serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

122. The exceptional provision of condonation of delay on grounds of "sufficient cause" is couched as a manifestation of substantive justice. This Court in Pathapati Subba Reddy (Died) by L.Rs. v. Special Deputy Collector (LA), 2024 SCC OnLine SC 513, summarized the principles governing the exceptions imagined under "sufficient cause" vis-à-vis substantive justice as under:—

"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 affixed 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 and 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." (Emphasis supplied)

123. From above, it is manifest that that the phrase "sufficient cause" in Section 5 of the Limitation Act is an expression of elastic import, incapable of precise definition, yet not without boundaries. Its purpose is to empower courts to advance the cause of justice by preventing genuine litigants from being shut out on account of unavoidable delays. At the same time, it is equally clear that the phrase is not a charter for indolence or a device to revive stale claims that the law of limitation otherwise extinguishes.

124. The burden to establish sufficient cause lies upon the party seeking condonation, and the court must be satisfied that the cause is real, bona fide, and free of negligence. Sufficiency of cause is to be determined contextually, on the totality of circumstances, with due regard to the conduct of the applicant and the prejudice caused to the opposite party. The inquiry is not mechanical but principled, resting on the dual pillars of bona fides and diligence.

125. The expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. The expression is to beconstrued with justice-oriented flexibility so as not to punish innocent litigants for circumstances beyond their control.

126. Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim *interest reipublicaeut sit finislitium* and destabilise the certainty that limitation law seeks to secure.

127. The expression "sufficient cause" must be construed in a manner that advances substantial justice while preserving the discipline of limitation. The courts are not to be swayed by sympathy or technical rigidity, but rather by a judicious appraisal of whether the applicant acted with reasonable diligence in pursuing the remedy. Where explanation is bona fide, plausible, and consistent with ordinary human conduct, courts have leaned towards condonation. Where negligence, want of good faith, or a casual approach is discernible, condonation has been refused."

9. The supreme Court in the above judgment by observing that length of delay may be instructive but not determinative, held that as under:-

"128. When it comes to condonation of delay, the length of delay is immaterial, and what matters is the acceptability of the explanation. A short delay may still warrant dismissal if unsupported by sufficient cause, whereas even a long delay may be condoned if justified by circumstances demonstrating bona fides.

129. Delay by itself is not inherently indicative of negligence. In certain cases, unavoidable circumstances such as illness, fraud, miscommunication, or bona fide mistake may stretch over long periods, yet remain excusable if they are explained with candour and supported by material. Conversely, an unexplained delay of even a few days may reveal inaction or deliberate disregard of statutory timelines, and therefore disentitle the party to indulgence.

130. The quantum of delay has no direct nexus in law with sufficiency of the cause. The law are independent and diverse factors. Hence the extent of delay should not determine whether the cause is sufficient or not. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the criterion. The criterion for condoning the delay is sufficiency of reason and not the length of the delay.

131. The decisive factor is the adequacy of the cause shown, not the length of delay. What is critical is whether the party seeking condonation acted with reasonable diligence during the prescribed period and whether the reasons advanced demonstrate a genuine inability to file within time. Thus, the test is qualitative rather than quantitative. 132. This is not to say that the length of delay is irrelevant. A longdelay naturally casts a heavier burden on the applicant to furnish cogent, credible, and convincing explanations. The proof required becomes stricter in proportion to the delay. The longer the time elapsed, the stronger the justification that must be put forth. Hence, length is instructive in determining the degree of scrutiny, but it is not determinative of the outcome.

133. The length of the delay functions as a contextual indicator but not a determinative factor. It alerts the court to the degree of rigour required in examining the explanation, yet the ultimate focus remains on whether "sufficient cause" has been shown. The doctrine thereby preserves both the integrity of statutory timelines and the imperative of doing justice in deserving cases.

134. Thus, in exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance."

10. The Supreme Court in the above case discussed the technical consideration within the mandate of Section 5 of the Limitation Act in relation to substantive justice and observed as under:-

"ii. Technical Considerations vis-à-vis Substantive Justice.

135. In construing "sufficient cause" it must be borne in mind that rules of procedure are handmaids of justice. Procedural rigidity should not become an instrument of injustice. In the context of Section 5 of the Limitation Act, this balance assumes special significance. Courts have repeatedly underscored that while limitation provisions are founded on sound principles of finality and certainty, their application cannot be divorced from the overarching objective of ensuring that litigants are not shut out from the doors of justice merely on account of technicalities.

136. When technical considerations of limitation conflict with the imperative of substantial justice, the latter should ordinarily prevail. Rules of limitation are not designed to destroy the rights of parties but to prevent inordinate delay in seeking remedies. Thus, the interpretation of "sufficient cause" must be liberal and purposive, aimed at advancing the cause of justice rather than defeating it. This is why the courts, while construing applications for condonation of delay, emphasize the bona fides of the applicant over the sheer arithmetical length of the delay.

137. Where strict adherence to these rules results in injustice, the Court is duty-bound to apply a liberal interpretation of "sufficient cause" so as to balance technical requirements with the demands of justice. A litigant does not stand to benefit by lodging an appeal late, and therefore, a pragmatic and justice-oriented approach must inform the judicial discretion under Section 5. This decision continues to be the most frequently cited authority for the proposition that the judiciary should incline towards justice rather

than technicality. Therefore, when courts interpret "sufficient cause," they are expected to exercise discretion in a manner that fosters justice, fairness, and equity, keeping in mind the realities of litigation.

138. When a Court of Law deals with an application to condone the delay filed under Section 5 of the Limitation Act, such application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. Section 5 of the Limitation Act must be liberally construed and applied so as to advance substantial justice. It is undoubtedly true that a justice oriented approach is necessary while deciding application under Section 5 of Limitation. However, it cannot be said that in every case delay must necessarily be condoned. It is a condition precedent for Section 5 of the Limitation Act that there must be a sufficient reason for condoning the delay.

139. However, while substantial justice must be advanced, the law of limitation is equally binding, and "sufficient cause" must be shown in substance, not in empty form. This ensures that the balance between justice and certainty is not skewed in favour of unmerited litigants.

140. However, at the same time, the courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the court, the inquiry is confined to whether "sufficient cause" has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly extraneous to this inquiry. If courts were to look into the merits of the matter at this stage, it would blur the boundaries between preliminary procedural questions and substantive adjudication, thereby conflating two distinct stages of judicial scrutiny. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay.

141. Test of "sufficient cause" cannot be substituted by an examination of the merits of the case. Condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain.

142. Another practical reason why merits must not be considered at the stage of delay condonation is that it risks prejudicing the mind of the court against one party even before the matter is substantively heard. By glancing into merits prematurely, the court may inadvertently form a view that colours the fairness of the subsequent adjudication. The judicial discipline required at this stage demands that only the cause for delay be scrutinized, and nothing more. This ensures that the ultimate adjudication of rights occurs in a neutral and unprejudiced setting.

143. The law of limitation is meant to apply uniformly across cases, regardless of the intrinsic strength or weakness of the claims involved. To import merits into condonation proceedings would effectively dilute this uniformity."

11. The Supreme Court also considered the circumstances when the discretion to condonation of delay can be exercised and held as under:-

C. In what circumstances can the exercise of discretion to condone the delay be interfered with?

144. One another submission that was canvassed on behalf of the respondents herein is that, where the court of first instance was satisfied as to the existence of "sufficient cause" for not filing the appeal or application, as the case may be, during the prescribed period of time and, on that basis, exercised its discretion in condoning the delay, then, in such cases, a court siting in appeal ought not to ordinarily interfere with the subjective view and prerogative of the court below in condoning the delay.

145. Ms. Suri, learned Senior Counsel appearing for the respondents, submitted that, in the present case, the High Court, whilst passing the impugned judgment and order, was satisfied with the explanation given by the respondents herein as to the existence of a sufficient cause which had prevented them from filing the appeal within the period of limitation, and that it was only after due consideration of all the material on record that the High Court proceeded to exercise its discretion to condone the delay in the filing thereof. She would submit that once the High Court, in its wisdom had, found the case at hand to be a fit one for the exercise of its discretion in condoning the delay, and had accordingly passed such an order, then this Court ought to refrain from interfering with the subjective view taken by the High Court.

146. In this regard, the learned Senior Counsel drew are attention to three decisions of this Court in Sheo Raj Singh (D) Tr. Lrs. v. Union of India, (2023) 10 SCC 531, Manjunath Anandappa urf. Shivappa Hanasi v. Tammanasa, (2003) 10 SCC 390 and Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593.

147. The expression "may be admitted" vests in the court adiscretion, the exercise of which is pre-conditioned to the proof of a "sufficient cause" for the failure to file the appeal or application, as the case may be, within the prescribed period of limitation. It enables a court to either admit or reject any appeal or application, for being barred by limitation, even if "sufficient cause" is shown to its satisfaction. The idea behind vesting the courts with such discretion is to ensure that the power to condone any delay in the filing of an appeal or application, as the case may be, is exercised only to advance substantial justice, where no prejudice or injustice would meted from such delay being condoned. Condonation of delay is not a matter of right but a discretion of the court.

148. The recourse to Section 5 of the Limitation Act for condonation of delay is not an inter-parte proceeding. Condonation of delay essentially is a question that the court has to decide on the basis of the material on records and the relevant law. The role of the parties is only confined to brining on record the relevant material to assist the court in exercising its discretion. Unlike adversarial proceedings in a lis where competing claims and counterclaims of parties are adjudicated, the adjudication under Section 5 is primarily inquisitorial in nature, with the court being called upon to assess, on an objective consideration of facts and circumstances, whether the explanation offered is sufficient and reasonable so as to warrant an extension of time, from the material it has relied upon for furnishing such explanation.

149. The Privy Council in Krishnasami Panikondar v. S.R.M.A.R. Ramasami Chettiar, 1917 SCC OnLine PC 70 held that an order of a court excusing the delay is not final or precluded from being questioned, and that it is always open to reconsideration at the instance of the party so affected by it. The relevant observations read as under:—

> **"It has been argued that the admission of the appeal by Sankaran Nair, J., was final, and that the Division Bench had no jurisdiction at the hearing of the appeal to reconsider the question whether the delay was excusable. But this order of admission was made not only in the absence of Ramasami Chettiar, the contesting Respondent, but without notice to him. And yet in terms it purported to deprive him of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice. It must, therefore, in common fairness be regarded as a tacit term of an order like the present that though unqualified in expression it should be open to reconsideration at the instance of the party affected; and this view is sanctioned by the practice of the Courts in India."**
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> **(Emphasis supplied)**

150. The aforesaid observations came to be endorsed by a Fivejudge-Bench of this Court in Dinabandhu Sahu (supra). The relevant observations read as under:—

8. […] In this respect, the position under the proviso to Section 85 is materially different from that under Section 5 of the Limitation Act, under which an order excusing delay is not final, and is liable to be questioned by the respondent at a later stage. (Vide the decision of the Privy Council in KrishnasamiPandikondar v. Ramasami Chettiar.)

151. In Shanti Prasad Gupta v. Dy. Director of Consolidation, 1981 Supp SCC 73, this Court held since the issue, whether there is a sufficient cause or not is a question of fact, where an order has been made under Section 5 of the Limitation Act by the lower court in the exercise of its discretion allowing or refusing an application to extend time, it cannot be interfered with in revision, unless the lower court has acted with material irregularity or contrary to law or has

come to that conclusion on no evidence. The relevant observations read as under:—

> "3. We find that Contention (1) is not correct. The order against which Gian Chand Bansari went in revision before the Director did not fall within the purview of Section 9-A of the U.P. Consolidation of Holdings Act and, as such, was not appealable under Section 11 of that Act. We however find a good deal of force in the second contention of the appellant. Whether or not there is sufficient cause for condonation of delay, is a question of fact dependent upon the facts and circumstances of a particular case, and the proposition is well-settled that when order has been made under Section 5 of the Limitation Act by the lower court in the exercise of its discretion allowing or refusing an application to extend time, it cannot be interfered with in revision, unless the lower court has acted with material irregularity or contrary to law or has come to that conclusion on no evidence.[...]"
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> (Emphasis supplied)

152. This Court in N. Balakrishnan (supra) held that once the court below accepts the explanation of delay as sufficient, the superior court should not disturb such finding unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. However, where the first court refuses to condone the delay, there the superior court would be free to consider the cause shown for the delay afresh to come to its own finding de hors the conclusion of the court below. The relevant observations read as under:—

> "9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of theexplanation is the only criterion. Sometimes delay of the shortestrange may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.
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> 10. The reason for such a different stance is thus: "The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."" (Emphasis supplied)

153. In Mithailal Dalsangar Singh v. Annabai Devram Kini, (2003) 10 SCC 691 this Court held that the finding of the court below on the question of availability of "sufficient cause" ought to be given weight and should not normally be interfered with in superior jurisdiction. The relevant observations read as under:—

> **"9. 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. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of "sufficient cause" within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."**
>
> **(Emphasis supplied)**

154. A coordinate Bench of this Court in a recent decision of Sheo Raj Singh (supra) speaking through Hon'ble Justice Dipankar Datta, held that there exists a fine distinction between when a court is hearing application for condonation of delay and when it is sitting in appeal over the exercise of discretion granting condonation of delay. In the former, the only material question is whether the delay be condoned or not, whereas in the latter the question is confined to if there has beenproper exercise of discretion in favour of grant of such prayer. It further cautioned that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below. The relevant observations read as under:—

> **"33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in Manjunath Anandappa v. Tammanasa, which in turn relied on the decision in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha where it has been held that:**
>
> **"an appellate power interferes not when the order appealed is not right but only when it is clearly wrong"."**
>
> **(Emphasis supplied)**

155. In Manjunath Anandappa (supra) this Court reiterated that a court of appeal should not ordinarily interfere with the discretion

exercised by the courts below. The relevant observations read as under: —

> "36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.
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> 37. In U.P. Coop. Federation Ltd. v. Sunder Bros., the law is stated in the following terms:
>
> "8. It is well established that where the discretion vested in the court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignoredrelevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well established; but, as has been observed by Viscount Simon, L.C., in Charles Osenton & Co. v. Johnston
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> 'The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case.'"
>
> (Emphasis supplied)

156. In Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593, this Court speaking through the inimitable V.R. Krishna Iyer J. (as his Lordship then was), observed that "an appellate power interferes when the order appealed is not right but only when it is clearly wrong". The erudite observations read as under:—

> "73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs

to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine. (Emphasis supplied)

157. However, the aforesaid observations must not be viewed in isolation from the immediately preceding paragraph. The observations therein are significant, for a holistic understanding. This Court in Gujarat Steel Tubes (supra) whilst holding the aforesaid, elaborated on when a court in appellate jurisdiction may be compelled to interfere with the order of a court below. It observed that where such order was vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure, and any other defects of like nature, the appellate court would be justified to intervene. The relevant observations read as under:—

"72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it is wrong. It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of Justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like."

(Emphasis supplied)

158. Deciding whether there was any proper and judicious exercise of discretion to condone the delay or not, is a slippery slope. Despite lengthy cautionary tales from this Court of judicial restraint in wantonly interfering with the subjective view of a court below, having been preached for time immemorial, it is plausible for an appellate court to falter in adhering to the same.

159. We are in complete agreement with the decision of this Court in Sheo Raj Singh (supra) as regards the significance of the distinction in scope when a court is hearing application for condonation of delay and when it is sitting in appeal over the exercise of discretion granting condonation of delay.

160. It is no more res integra that where a court below refused to condone the delay, then the court sitting in appeal would be entitled to consider if delay should be condoned or not afresh, notwithstanding the decision of the lower court. However, some weight and importance would have to be given to the reasons which swayed the court below from refusing to exercise its discretion. Because refusal to condone the delay is also, nevertheless an exercise of discretion to not exercise discretion. However, the scope, available

to the appellate court to substitute its findings in such scenarios would enjoy a considerable degree of play in its joints.

161. However, where a court is sitting in appeal over the exercise of discretion granting condonation of delay, it is only required to see if there was a proper exercise of discretion by the courts below and if the same was for advancing the cause of justice. But the question that we ask ourselves is, what is meant by "proper exercise of discretion"? What does the enquiry into the propriety of discretion encompass?

162. Proper exercise of discretion in condoning the delay connotes that the such exercise was not improper or unwarranted. This as a naturally corollary would open up an inquiry into the fundamental constituents or ingredients necessary for the exercise of power to condone delay. As such it would require the appellate court to see if the sufficient cause had occasioned during the prescribed period of limitation, if the explanation offered inspires confidence, if the court below in construing "sufficient cause" had ventured into extraneous considerations. Likewise, where a lower court's decision in accepting the "sufficient cause" is either contrary to the law or suffers from any material irregularity or is vulnerable for lack of evidence, then such an order condoning the delay would be a fit one to be interfered with by the appellate court.

163. Thus, a two pronged inquiry is required by the appellate court; first, into the existence of a "sufficient cause" and secondly, into the exercise of discretion itself, where the first test is satisfied.

164. This would necessarily entail the appellate court to look into the material on record, the contents of the explanation that had swayed the mind of the court below. However, the extent to which the court sitting in appeal is to look into the same is confined to ascertaining whether the view taken by the court below is forthcoming and plausible or not. The observations "but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion" made in Manjunath Anandappa (supra) bolster this view. Thus, the appellate court must see if the material on record inspires confidence for accepting the plea of "sufficient cause" and the explanation offered in that regard for the entirety of the period from when the limitation began till the actual date of filing. If the lower court had accepted the explanation capriciously or without proper legal material to support its decision, then the same may be interfered with.

165. However, we again at the cost of repetition, make it clear, that the entire purpose this enquiry is only to see if the view that was arrived at by the court below could have been taken by it, from the material on record, had it been in seisin of the matter as a court of first instance, or had the court below refused the prayer for condonation of delay. Once the appellate court is of the opinion that the view arrived at by the court of below is plausible and not contrary to the law, it would not be open for it to interfere with the same, merely because another view is also equally plausible.

166. The role of the appellate court is limited to assessing the material on record, and to satisfy itself that the order passed by the court below is not vitiated due to any material irregularity, want of evidence, extraneous considerations, failure to take into consideration any relevant fact, or being contrary to the law of the land, which inevitably includes if the ingredients of Section 5 of the Limitation Act were met or not. It is to ensure that a plea of "sufficient cause" is not accepted superficially merely because some explanation was offered by looking into the material that constituted such sufficient cause.

167. Once, the material on record lend support to the view arrived at by the court below, the enquiry of the appellate court into the material on record ends. Thereafter, what remains to be seen is only the exercise of discretion by the court below, which warrants a careful and delicate approach from the appellate court. This is because acceptance of the explanation as a sufficient cause is the result of a positive exercise of discretion and normally the appellate court should not disturb such exercise of discretion, unless the exercise of discretion was on wholly waterable grounds or arbitrary or perverse.

168. In this regard, what the appellate court has to see is that the discretion that was exercised by the court below, was not done in a mechanical or routine manner and without any application of mind as to whether such an exercise would advance the cause of justice or lead to miscarriage of justice. The exercise of discretion must have been in a reasonable manner, and should not have resulted in any grave prejudice to the other side. The test is to is if the exercise of discretion was patently wrong or not, and ordinarily the appellate court will be slow and circumspect to substitute its own opinion on the exercise of discretion, once it is satisfied that the view of the court below in accepting the plea of sufficient cause was plausible. If it is found that in exercising the discretion to condone the delay, the court below had lost sight of a general rule or misdirected itself as to the applicability of the rule, then it will be deemed to have misdirected itself as to the law applicable to the case, and the appellate court will interfere and remit the case or itself exercise the discretion.

169. To sum up, the appellate court cannot embark upon an inquiry to enter a finding based on its likes or dislikes. The true test is to see, if it had been up to the appellate court, could the delay have been plausibly condoned for the same reason that was assigned by the court below, by looking into the material on record to see if the ingredients of Section 5 of the Limitation Act were fulfilled or not. If the ingredients of the provision is found to not have been fulfilled, the appellate court can and ought to interfere with the order of the court below.

170. However, if the aforesaid is answered in an affirmative, all that remains to be seen is that the discretion that was exercised in condoning the delay was not done mechanically, arbitrarily or capriciously, and was exercised for the purpose of advancing the

cause of justice. Only where the exercise of discretion was clearly wrong, would the court sitting in appeal, interfere with the same.

12. It is reflecting from the record that the respondent no.1 filed O.A. bearing no.159/2015 titled as **State Bank of India Vs. Shirin Foods Limited & another** and the appellants were arrayed as the defendants 1 and 2 in the O.A. They were ordered to be proceeded *ex parte* vide order dated 30.10.2015. The appellants filed a Misc. Application bearing no.860/2025 for setting aside the *ex parte* order dated 30.10.2015, which was allowed subject to payment of Rs.1 lac to be adjusted against the outstanding dues However, the appellants did not pay the said amount and accordingly vide order dated 30.05.2016, the order dated 30.10.2015 was revived by the DRT. O.A. bearing no.159/2015 was decided vide judgment dated 16.11.2016. The appellants also filed a Misc. Application bearing no.06/2017 which was ordered to be dismissed in default due to non-representation of the appellants, vide order dated 11.09.2017. The present appeal as per the appellant is filed with a delay of 2454 days but as per calculation made by the Registry there is a delay of 3192 days. The main contention of the appellants is that the father of the appellant no.2 was looking after the trial in the O.A. and prosecution of the Misc. Application bearing no.06/2017 but he expired on 10.04.2019 and thereafter the appellant no.2 being resident of Kolkata could not take care of the litigations before DRT. The appellants also contended that they came to know about the dismissal of the Misc. Application bearing no.06/2017 when they received the sale proclamation dated 19.08.2023 issued by the Recovery Officer. It is also contended on behalf of the appellants that they never instructed their advocate/counsel to withdraw from the prosecution of Misc. Application bearing no.06/2017 and the delay was neither deliberate nor intentional.

13. Sh. Puru Gupta, Advocate for the appellants after referring to the contents as mentioned in the application argued that the delay was not deliberate or intentional but due to the reason that father of the appellant no.2 was taking care of the litigation before the DRT and subsequent to his death the country was hit by COVID pandemic preventing the appellant no.2 from pursuing the Misc. Application bearing no.06/2017 and this was beyond the control of the appellant no.2. However, the perusal of the application under disposal reflects that the appellants have not given details of the counsel who was appearing on behalf of the

appellants before DRT in O.A. as well as in the application bearing no.06/2017. The final judgment was passed and the Misc. Application bearing no.06/2017 was disposed of much before COVID pandemic hit the country.

14. As decided by the Supreme Court in **Shiv Amma (dead) by LRs. V. Karnataka Housing Board & others** case, the appellant who is seeking the condonation of delay has to demonstrate the existence of sufficient cause within the prescribed period to the satisfaction of the Court. The establishment of sufficient case is the first ingredient for the purpose of condonation of delay. Section 5 of the Limitation Act gives discretion to the Court to appreciate reason for seeking condonation of delay as per judicial assessment. There cannot be any arithmetical formula for judging sufficient cause for condonation of delay. However, the approach to be adopted by the Court to give interpretation to sufficient cause is to be elastic so that the ends of justice can be sub served. It is true that the liberal pragmatic justice-oriented approach be made to determine sufficient cause as the substantial justice is paramount which should not be undermined due to technical considerations. However, the appellant has failed to disclose sufficient cause for condonation of delay. The reason as disclosed by the appellants in the application under disposal as sufficient cause for condonation of delay does not appeal to the reasons and cannot be accepted. The arguments advanced by the counsel for the appellants cannot be accepted. Hence, the application is dismissed.

Appeal No.227/2026

15. As the delay in filing the appeal is not condoned, the present appeal is dismissed as time-barred.

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(Dr. Justice Sudhir Kumar Jain)
Chairperson

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