

Laxmi Narain Gupta Vs Additional District Judge, Court No.3, Hardoi

Court: ALLAHABAD HIGH COURT

Date of Decision: May 31, 2016

Acts Referred: Limitation Act, 1963 - Section 14, Section 5
 Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21, Section 22

Citation: (2017) 120 ALR 412

Hon'ble Judges: Rakesh Srivastava, J.

Bench: Single Bench

Advocate: Anuran Narain, Advocate, for the Petitioner; Manish Kumar, Mohammad Aslam Khan, Advocates, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Srivastava, J. - Whether the Additional District Judge, Court No. 3, Hardoi was justified in condoning more than eight years" delay in filing

of appeal under section 22 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short "1972 Act") by the

respondent nos. 2 to 8 against the judgment dated 5.11.2004 passed by the Prescribed Authority/Additional Civil Judge (Senior Division), Hardoi

in P.A. Case No. 9 of 1999 is the short question which arises for consideration in this writ petition.

2. The dispute relates to a shop situated at Mohalla Sulhara, Bilgram, Hardoi. The said shop was owned by Sri Ram Babu and his wife Smt. Ram

Devi and after their death the appellant nos. 1 to 5 and one Smt. Reshma Devi became the owner of the said shop. The said shop was originally let

out to one Sri Munnu Lal, the father of respondent nos. 2 to 5, 7 & 8 and husband of respondent no. 6. After the death of Sri Munnu Lal,

respondent nos. 2 to 8 became the tenant of the shop in dispute.

3. On 21.10.1999 the petitioners-landlords moved an application under Section 21 (1) (a) of the 1972 Act, for release of the shop on the ground

of their bona fide need. A joint written statement was filed on behalf of all the tenants, through their advocate Sri Ajay Kumar Dwivedi. After filing

the written statement the respondent nos. 2 to 8 & ½ the tenants did not pursue the matter and ultimately on 05.11.2004 the release application

moved by the petitioners was allowed by the Prescribed Authority. The tenants were directed to hand over vacant possession of the shop in

question to the landlords within four months.

4. On 10/11.03.2005 the respondent no. 3 alone filed an application for recall of the ex parte order dated 05.11.2004 along with an application

under Section 5 of the Limitation Act, 1963 (for short "Limitation Act") seeking condonation of delay. On 07.12.2007 the application for

condonation of delay was allowed. But, subsequently the application under Order 9, Rule 13 C.P.C. moved by respondent no. 3 was rejected by

the Prescribed Authority by an order dated 14.03.2008. Against the judgment and order dated 14.03.2008 the respondent no. 3 preferred a

Misc. Appeal No. 15 of 2008 which too was rejected by Additional District Judge, Court No. 6, Hardoi vide judgment dated 23.01.2009, as not

maintainable. The order dated 14.03.2008 passed by the Prescribed Authority and the judgment and order dated 23.01.2009 passed by

Additional District Judge was assailed by the respondent no. 3 before this Court in writ petition bearing Misc. Single No. 595 of 2009, Manoj

Kumar alias Nanhey v. Additional District Judge & Ors.

5. The writ petition, mentioned above, was dismissed by a learned Single Judge of this Court on merit on 20.07.2012. After the pronouncement of

judgment in said writ petition, on the request of the learned counsel for respondent no. 3, the learned Single Judge passed another order clarifying

that the judgment dated 20.07.2012 would not in any manner prejudice the right of appeal, if any, of the respondent no. 3. The subsequent order

dated 20.07.2012 is extracted below:-

After pronouncement of judgment, learned counsel for the petitioner stated that still he has right of appeal and this judgment ought not be

construed as debarring him from availing that remedy. It is therefore made clear that if petitioner has right of appeal, this judgment does not in any

manner prejudice such right and competent Court shall look into all aspects of the matter in accordance with law.

6. On 13.3.2013, after eight years four months and eight days to be precise, the respondent nos. 2 to 8 preferred an appeal before the Additional

District Judge, Court No. 3, Hardoi against the judgment and order dated 05.11.2004 passed by the Prescribed Authority along with an

application under Section 14 read with Section 5 of the Limitation Act for condoning the delay in filing the appeal. Paragraph 1 to 5 of the

application for condonation of delay is extracted below for the sake of reference:-

vkosnu i= vUrxZr /kkjk 14 o /kkjk 5 ifjlhek vf/kfu;e%

1- ;g fd izkFkhZx.k@vihykFkhZx.k dkuwu dh rduhd ls vufHkK gSA vk{ksfir vkns"k @ fu.kZ; fnukafdr 05-11-2004 tks ih0,0 dsl ua0 9 lu~

1999 o eqdnek y{eh ujk;u vkfn cuke lrh"k pUnz vkfn] esa fu;r izkf/kdkjh }kjk ikfjr fd;k x;k Fkk] dks iwoZ vf/koDrk }kjk ,di{kh; vkns"k gS]

izdV djrs gq, vkns"k 9] fu;e 13] tk0nh0 ds v/khu vkosnu&i= ih0,0 vkj0,e0 ua0 1@05 izsf""kr fd;k x;k tks fnukad 14-03-2008 dks fujLr gqvk ftlds

fo:) eqrQfjZe vihy la0 15@08 U;k;ky; jheku tuin U;k;k/kh"U;k;ky; ij izLrqr dh x;h tks U;k;ky; Jheku~ vij tuin U;k;k/kh"U;k;ky; dksVZ ua0 6 }kjk

fnukad 23-01-2009 dks fujLr dj nh x;h] mlds i"pkr~ ekuuh; mPp U;k;ky; esa Hkh vkns"k 9] fu;e 13 tk0nh0 ls IEcfU/kr izdj.k fV ;kfpdk la;k

595@09 ds ek;/e ls izsf""kr fd;k x;kA

2- ;g fd ,slk izdV gksrk gS fd ih0,0 okn la0 9@1999 esa ikfjr fu.kZ; fnukafdr 05-11-2004 dks ,di{kh; vo/kkfjr ugha fd;k x;k vkSj ekuuh; mPp

U;k;ky; esa izLrqr ;kfpdk vLohdkj djrs gq, vihy nkf[ky djus dk fof/kd vf/kdkj lqjf{kr fd;k x;k gSA

3- ;g fd ,slk izdV gksrk gS fd iwoZ vf/koDrkvksa dh ltxghurk ds vk/kkj ij Wrong Forum Adopt fd;k x;k vkSj vihy izLrqr u djrs gq, vkns"k 9] fu;e

13] tk0nh0] eqrQfjZe vihy mlds i"pkr~ ekuuh; mPp U;k;ky; esas ;kfpdk izsf""kr dh x;h ;g Wrong Forum vf/kdoDrkvksa dh fof/kd jk; ds vk/kkj ij

dkfjr gqvkA

4- ;g fd v/khu /kkjk 14 ifjheh vf/kfu;e dk ykHk izklr djus ds vf/kdkjh izkFkhZ.k gSA

5- ;g fd ekuuh; mPp U;k;ky; esa tks fu.kZ; fV ;kfpdk la;k 595@2009 esa fnukad 22-07-2012 dks ikfjr gqvk mlds i"pkr~ fnukad 20-07-2012

dks gh ikfjr vkns"k ckor~ izLrqr djus vihy dk vf/kdkjh dh tkudkj fu;r izkf/kdkjh }kjk ih0,0 btjk; okn la0&4@07 esa izi= ?k tkjh fd;s tkus ds

i"pkr~ uofu;qDr vf/koDrk }kjk fof/kd jk; ysus ij muds }kjk ekuuh; mPp U;k;ky; esa vihykFkhZ ds vf/koDrk eks0 vkfny [kku ls fnukad 11-03-

2013 dks nwjHkk""k ls okrkZyki djus rFkk mlh fnol ih0,0 okn la0&9@1999 esa ikfjr fu.kZ; fnukad 05-11-2004 dh vkns"k o fMxz dh izekf.kr

izkflr dj rRi"pkr~ fnukaad 12-03-2013 dks ek0 mPp U;k;ky; ls ikfjr mDr i"pkr~orhZ vkns"k fnukafdr 20-07-2012 dh izekf.kr izfr izklr djus ij

vkns"k fnukad 20-07-2012 bZ0 dk Kku gks ldkA Kku dh frfFk ls izkFkhZ.k }kjk izLrqr vihy vUnj fe;kn gSA

7. The application for condonation of delay was resisted by the petitioners by filing detailed objection.

8. On 31.05.2013, the Additional District Judge, Court No. 3, Hardoi, passed an order whereby the delay in filing the appeal against judgment

and 3 order dated 05.11.2004 was condoned and the appeal was admitted for hearing. The relevant portion of the order dated 31.05.2013 is

reproduced below:

mijksDr Hkkuq dqekj tSu o jkuh pkS/kjh ds izdj.k vihy dsk xzkgkzrk ls IEcfU/kr gSA fdUrq bl Lrj ij vihy dh xzkgkzrk ij fopkj u dj dsoy /kkjk 5 o

/kkjk 14 fe;kn vf/k0 ij fopkj fd;k tk jgk gSA

vihykFkhZ@izkFkhZ.k }kjk feFkys"U;k;ky; dqekjh cuke Mh0Vh0lh0] 1 dks mDr fd;k x;k gSA ftlesa dgk x;k gS fd foyEc ds {kek ds ekeys esa

U;k;ky; dks yphyk n`f""Vdks.k viukuk pkfg,] fof/k dk vFkZ vihy ds vf/kdkj dks lekIr djuk ugha gSA U;k;ky; }kjk iz;kl djuk pkfg, dh i{kksa dks

i;kZIr U;k; fn;k tk;sa ctk; rduhdh vk/kkjksa ij U;k; dh izd`fr dks lekIr djus dh izkFkhZ }kjk izLrqr fof/k O;oLFkk ekuuh; mPp U;k;ky; bykgckn

}kjk izfrikfnr gS tcfd izR;FkhZ dh vksj ls izLrqr fof/k O;oLFkk,a eaxrjke] xtkuu flag esa m)r izdj.k ekuuh; mRrjk[k.M o iatkc o gfj;k.kk mPp

U;k;ky; }kjk izfrikfnr fd;s x;s gSaA blh rjg cky d`""k mijksDr dk izdj.k Hkh jktLFkku mPp U;k;ky; }kjk izfrikfnr fd;k x;k gSA tks bl U;k;ky; ij

ck;/dkjh izHkko ugha j[krk gS tc fd vihykFkhZ@izkFkhZx.k }kjk izLrqr feFkys"k dqekjh dk fof/k n`""VkUr bl U;k;ky; esa ck;/dkjh izHkko

j[krk gSA

vr% mijksDr fo"ys""k.k ds i"pkr~ eSa bl fu""d""kZ ij igqaprk gwWa vihy izLrqr djus esa gq, foyEc ds izkFkZuk i= /kkjk 14 o 5 fe;kn vf/kfu;e dk

izkFkZuk i= Hkkjh gtsZ ij Lohdkj fd;s tkus ;ksX; gSA

9. The order dated 31.05.2013 is under challenge in the present writ petition.

10. Sri Anurag Narain, learned counsel for the petitioner, has vehemently submitted that the provisions of Section 14 of the Limitation Act are not

applicable to the proceedings under the 1972 Act. The counsel submits that there being no explanation, let alone a satisfactory explanation, for the

inordinate delay of more than eight years in filing the appeal, the application for condonation of delay was liable to be rejected.

11. Per contra, Sri Mohd. Arif Khan, learned Senior Advocate, assisted by Sri Mohd. Aslam Khan, has supported the order and has submitted

that while considering "sufficient cause" the court was obliged to adopt a liberal approach. It was further submitted that once the discretion has

been exercised in favour of the respondents no interference from this Court was called for. Sri Mohd. Arif Khan has fairly conceded that the

provisions of Section 14 of the Limitation Act, as such, are not applicable to the proceedings under the 1972 Act.

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

13. Section 5 of the Limitation Act provides for extension of period in certain cases. It, inter alia, provides that any appeal may be admitted after

the period of limitation prescribed therefor when the appellant satisfies the court that he had "sufficient cause" for not preferring the appeal within

the period prescribed.

14. Before adverting to the facts of the case, it is apposite to take note of the principles of law laid down by the Apex Court which have to be

taken into account while considering an application under section 5 of the Limitation Act for condonation of delay in filing an appeal. The issue,

however, is no longer res integra and is settled by a catena of decisions of the Apex Court.

15. The principle has been succinctly stated way back in 1962, in the case of Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361, and the same

has been repeatedly quoted with respect and approval. The Apex Court in paragraph 7 & 12 of the said report has held as follows:

7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of

limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In

other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the

decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.

The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone

delay and admit the appeal.

and in paragraph 12 it was observed as under:

12. It is, however, necessary to emphasis that even after sufficient cause has been shown a party is not entitled to the condonation of delay in

question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the

court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that

ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the

matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for

consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only

to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In

this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the court is dealing with

applications made under Section 14 of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the

combined provisions of Sections 5 and 14.

16. In the case of N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, the Apex Court in paragraph 9, 12 & 13 has held as follows:

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 the explanation is the only criterion.

Sometimes delay of the shortest range 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.

12. A court knows that refusal to condone delay would result 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.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to

turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory

strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the

party deliberately to gain time then the court should lean against acceptance of the explanation.

17. In the case of P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556 the Apex Court while reversing the order passed by the High Court

which had condoned the delay of 565 days in filing an appeal, observed as under:

6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts

have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor

judicious. The order condoning the delay cannot be sustained.

18. In the case of Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106, the Apex Court observed as under:

5. 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.

19. In the case of *State of Nagaland v. Lipok Ao*, (2005) 3 SCC 752, the Apex Court in paragraph 8 of the report opined as under:

8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction (sic discretion) vested in the court. What

counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account

in using the discretion.

20. In the case of *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn.*, (2010) 5 SCC 459, the Apex Court held

as under:

14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation

with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The

idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period

within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the

delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the

courts to apply the law in a meaningful manner which sub-serves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing

with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short

duration and a stricter approach where the delay is inordinate.

21. In *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*, (2012) 5 SCC 157, the Apex Court in paragraph 23 and 24 of the report

opined:

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power

under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has

acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the

explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona

fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly

negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

22. From the discussions above, the following principles of law emerge:

(i) when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat that decree as

beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time, should not be light-heartedly disturbed.

(ii) if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal.

(iii) The proof of a sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient

cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone.

(iv) Even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right.

(v) If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. For this purpose all relevant facts

have to be considered and it is at this stage that diligence of the party or its bona fides may fall for consideration.

(vi) What constitutes sufficient cause cannot be laid down by hard-and-fast rules.

(vii) The term "sufficient cause" has to be liberally construed.

(viii) Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range 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.

(ix) Once the court accepts the explanation as sufficient, normally the superior court should not disturb such finding, unless the exercise of

discretion was on wholly untenable grounds or arbitrary or perverse.

(x) Considerations of bona fides or due diligence are always material and relevant when the court is dealing with applications made under Section

14 of the Limitation Act. In dealing with such applications the court is called upon to consider the effect of the combined provisions of Sections 5

and 14.

(xi) The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the

parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay.

23. In the light of the settled legal proposition, as mentioned above, it is to be seen whether the respondents had offered any plausible/tangible

explanation for the inordinate delay of more than eight years in filing the appeal and as to whether the appellate court was justified in condoning the

delay in the peculiar facts of the present case.

24. A perusal of the impugned judgment dated 31.05.2013 would show that the learned Additional District Judge, after reproducing the contents

of the application for condonation of delay, has referred to the judgments cited by the contesting parties and, has thereafter, condoned the delay of

more than eight years by making a cryptic observation that the cause shown was sufficient and has thereby allowed the application for condonation

of delay moved by the respondent nos. 2 to 8 under Sections 5 & 14 of the Limitation Act without adverting to the averments contained therein.

Moreover, in the impugned judgment there is no whisper about the objections preferred by the petitioners. It is not possible to fathom any reason

why the court below has omitted to consider the detailed objections which were, admittedly, filed by the petitioners.

25. The appellate court was not bound to readily accept whatever was stated on behalf of the private respondents to explain the delay. The court

below was obliged to examine the correctness of the explanation given by the respondent nos. 2 to 8, keeping in view the principles laid down by

the Apex Court in several cases and the objections preferred by the petitioners and consider the same on merits and then express an opinion, one

way or the other. It is quite unfortunate that the Court below has condoned the delay of more than eight years without dealing with the explanation

given by the respondent nos. 2 to 8 and the objections preferred by the petitioners against the said application.

26. The application for condonation of delay was moved by the respondent nos. 2 to 8 under Section 14 and Section 5 of the Limitation Act. The

learned Additional District Judge has condoned the delay of more than eight years by mechanically extending the benefit of Section 14 of the Act.

The impugned order is liable to be set aside on this ground alone.

27. It is settled that even though the provisions of Section 14 of the Limitation Act per se may not be applicable but the principles thereof would be

applicable for the purpose of condonation of delay in filing the appeal in terms of Section 5 of the said Act but for that purpose the respondent nos.

2 to 8 were obliged to establish that they were prosecuting with due diligence some remedy with respect to the matter in dispute before a court of

law.

28. The delay of more than eight years in filing the appeal has been explained by the private respondents by stating that against the judgment and

order dated 05.11.2004, an application under Order 9, Rule 13 CPC for recall of the said order was moved, which was dismissed on

14.03.2008; the appeal against the order dated 14.03.2008 was dismissed on 23.01.2009; the writ petition against the order dated 14.03.2008

and 23.01.2009 was dismissed by this Court on 20.07.2012; and thereafter, on coming to know about the subsequent order dated 20.07.2012

passed by this Court in Writ Petition No. 595 of 2009 and after talking to their counsel and after obtaining copies of the order dated 20.07.2012

passed by this Court they came to know about the order dated 20.07.2012 passed in Writ Petition No. 595 of 2009 and immediately thereafter

the appeal was filed by them on 13.03.2013. In these circumstances it was stated by the private respondents that they were entitled to exclude the

period during which the application under Order 9, Rule 13 CPC, the appeal against the order rejecting the application under Order 9, Rule 13

CPC and the writ petition were pending before this Court.

29. In so far as respondent nos. 2 and 4 to 8 are concerned, admittedly, no proceeding against the judgment and order dated 05.11.2004 was

taken up by them in any court of law till the time of filing of appeal and as such the 14 of the Limitation Act or the principles akin thereto cannot be

relied upon for exclusion of the period during which the application under Order 9, Rule 13 CPC moved by respondent no. 3 for recall of the

order dated 05.11.2004 before the Prescribed Authority; the appeal against the order dated 14.03.2008 before the Appellate Authority and the

writ petition preferred by the respondent no 3 remained pending before this Court. Thus, there is no explanation, what to say of satisfactory

explanation, on behalf of respondent nos. 2 and 4 to 8 for the inordinate delay in filing the appeal. In fact, the way in which the application for

condonation of delay has been drafted, it is apparent that the respondent nos. 2 to 8 have tried to mislead this Court by claiming benefit of section

14 of the Limitation Act. The application for condonation of delay in so far as the respondent nos. 2 and 4 to 8 are concerned was liable to be

dismissed outright.

30. In so far as respondent no. 3 is concerned, an application under Order 9, Rule 13 CPC for recall of the ex parte judgment dated 05.11.2004

was filed by him on 11.03.2005 along with an application for condonation of delay. The delay, however, was condoned on 01.10.2007 but,

subsequently, the application dated 11.03.2005 was dismissed by the Prescribed Authority on 14.03.2008. Against the order dated 14.03.2008

the respondent no. 3 preferred an appeal under Section 22 of the Act.

31. An objection regarding the maintainability of the appeal under Section 22 of the 1972 Act against the order dated 14.03.2008 was taken by

the petitioners at the earliest possible opportunity. Despite the settled legal position, the respondent no. 3, continued to pursue the appeal preferred

by him under Section 22 of the Act. On 23.01.2009, the appeal preferred by the respondent no. 3 against the judgment and order dated

05.11.2004 was dismissed by the Additional District Judge, Hardoi as not maintainable. While dismissing the appeal, the learned Additional

District Judge had categorically recorded that the counsel for the respondent nos. 3 was not able to rebut the settled legal position that an appeal

under Section 22 of 1972 Act against an order rejecting an application for recall of an ex parte order of release under section 21 of the 1972 Act

was not maintainable. The relevant part of the order dated 23.01.2009 passed by the Additional District Judge in Misc. Civil Appeal No. 15 of

2008 is extracted below:-

The Supreme Court in the case of M/s Ram Narain P. Ltd. v. State Trading Corporation of India Ltd. AIR 1983 SC 786 held:

The right to prefer an appeal is created by Statute. No party can file an appeal against any judgment, decree or order as a matter of course in the

absence of a suitable provision of some law conferring on the party concerned the right to file appeal against any judgment, decree or order." (4)

Similarly, the Allahabad High Court in the case of Smt. Dhooran alias Ghoooran v. The District Judge, Kanpur and others ARC 1982 (1) 197 held:

An appeal is always creature of Statute. Section 22 under which the petitioner filed the appeal provides for appeal against the order passed under

Section 21. No appeal is provided under the Act against an order rejecting an application for setting aside of an ex parte order of release.

(5) Thus since the Act does not provide any appeal against the order passed under Rule 34, the provisions of the Civil Procedure Code can not be

taken aid of. The Allahabad High in number of case has held that appeal against the order passed under Rule 34 is not maintainable.

(6) The learned counsel of the appellant has not been able to rebut this legal position by producing any contrary binding authority and all the rulings

referred to by him are on the factual aspect of the matter/controversy.

(7) Thus very clearly the miscellaneous civil appeal, filed under Order 43, Rule 1 (d) of the Civil Procedure Code, is not maintainable. And the

only remedy is by way of appeal under Section 22 of the Act.

(8) Since this miscellaneous civil appeal is not maintainable, hence it is not at all necessary for this Court to enter into the factual controversy or to

examine the legality of the impugned order of the learned civil judge.

9. On the basis of above discussion, the miscellaneous civil appeal is liable to be dismissed.

ORDER

The miscellaneous civil appeal no. 15 of 2008 is hereby dismissed with costs.

(Emphasis supplied)

32. Knowing fully well that the appeal against the order rejecting an application for setting aside of an ex parte order was not maintainable, the

respondent no. 3 preferred a writ petition before this Court challenging the judgment and order dated 05.11.2004 as well as the order dated

23.01.2009 mentioned above. And then at the time of hearing of the writ petition, it was conceded by the counsel for the respondent no. 3 that the

appeal in so far as order dated 14.03.2008 was concerned, was not maintainable. Paragraph 11 of the order dated 20.07.2012 passed by this

Court is quoted below:-

Sri M.A. Khan, learned Senior Advocate, fairly conceded that so far as the view taken by Appellate Court, respondent no. 1, that appeal against

the order dated 14.03.2008 was not maintainable cannot be faulted and it appears that petitioner under a mistaken, wrong legal advice filed such

appeal though it was not maintainable.

33. On the undisputed facts, mentioned above, it is clear that an appeal under section 22 of the 1972 Act, against an order rejecting an application

for recall of an ex parte order of release passed under section 21 of the said Act was not maintainable. The objection as to the maintainability of

the appeal was taken by the petitioners at the very initial stage but that was resisted and the respondent no. 3 invited a decision by the Appellate

Court. Even though the respondent knew fully well that the appeal filed by him under section 22 was not maintainable, the respondent no. 3 took

the risk of filing a writ petition before this Court and at the time of hearing of the said writ petition it was conceded on behalf of the respondent no.

3 that the appeal under section 22 of the 1972 Act against the order dated 14.03.2008 was not maintainable. In the circumstances, it cannot be

said that the respondent no. 3 was prosecuting the previous proceeding with due diligence and good faith and as such there is no justification in

extending the benefit of section 14 of the Limitation Act or the principles akin thereto for excluding the period during which the respondent no. 3

was prosecuting the previous proceedings.

34. Apart from the above, in paragraph 5 of the application for condonation of delay it has been stated that after Form-B was issued in the

execution proceedings, the private respondents took the opinion of their newly appointed advocate who in turn, on 11.03.2013, spoke to the

counsel who was conducting the Writ Petition No. 595 of 2009 in this Court and thereafter they obtained a copy of the judgment and decree

dated 05.11.2004 and then on 12.03.2012 they obtained a certified copy of the subsequent order dated 20.07.2012 passed in Writ Petition No.

595 of 2009, and then they came to know about the said order and from the date of knowledge the appeal was within time.

35. The averments made in paragraph 5 of the application for condonation of delay are completely vague. In the application for condonation of

delay the date on which the order dated 20.7.2012 by means of which the writ petition was dismissed by this Court has not been mentioned. It is

not the case of the respondent no. 3 that the order dated 20.07.2012 was not communicated to him by his counsel immediately after the said order

was passed by this Court. The date on which the respondent nos. 3 came to know about the order dated 20.07.2012 is conspicuously missing. In

paragraph 5 of the application it has been stated that the respondents came to know about the subsequent order dated 20.07.2012 passed by this

Court after Form "Gha" was issued in the execution proceedings and he contacted his counsel in this Court on telephone on 11.03.2013. It is not

possible to believe that the respondent no. 3 was not aware of the order dated 20.7.2012 passed by this court in his writ petition on the very date

the order was passed or immediately thereafter.

36. The story narrated by the respondent nos. 2 to 8 in paragraph 5 of the application for condonation of delay is a concocted story for the simple

reason that in paragraph 11 of the counter affidavit the respondent nos. 2 to 8 have put forward a different version altogether. Paragraph 11 of the

counter affidavit is quoted below:-

11. That in reply to para-9 of the writ petition, it is stated that after the judgment dated 20.07.2012 passed by this Hon"ble Court, the deponent

instructed the counsel, namely, Sri Ajay Dwivedi, Advocate to file an appeal but on one or the other pretext, despite giving verbal assurances to

file the appeal, he had not filed the same, with the result, the deponent by engaging another counsel filed an appeal against the ex parte judgment

dated 05.11.2004 passed by the Prescribed Authority in P.A. Case No. 9 of 1999 along with an application under Section 5 read with Section 14

of the Indian Limitation Act. A copy of the memo of appeal and the application under Section 5 read with Section 14 of the Indian Limitation Act

have been filed as annexure no. 6 and 7, the contents whereof can be ascertained from the same and anything inconsistent therewith is denied.

37. Apart from the above the conduct of the respondents has not been bona fide throughout. On the contrary they have been grossly negligent.

The respondent nos. 2 to 8 filed their written statement in the proceeding under Section 21 (1) (a) of 1972 Act after four years and thereafter they

never appeared in the said case. After the ex parte order dated 05.11.2004 was passed except for respondent no. 3 none of the private

respondents pursued the matter. So far as respondent no. 3 is concerned while dismissing the writ petition preferred by him earlier this Court has

observed that his approach too was not bona fide. The relevant portion of the order dated 20.07.2012 is quoted below:-

29. However, in the case in hand the conduct of petitioner does not show an honest and careful pairavi at all. On the contrary, I have no hesitation

in observing that petitioner was thoroughly careless and negligent in defending and pursuing the suit proceedings. Unless he would have appeared in

subsequent proceedings, after filing written statement to adduce evidence etc., it cannot be said that despite remaining absent for almost four years,

still he can be treated a serious litigant in the matter. Therefore, the decision in Malkiat Singh (Supra) would also lend him no support.

38. In the circumstances mentioned above, there is no iota of truth in the story put forward by the respondent no 3. On the contrary, the private

respondents have adopted dilatory tactics to prolong the litigation. Based upon the present materials, this Court is not satisfied that sufficient cause

has been made out to explain the delay of more than eight years in filing the appeal.

39. In the result, the writ petition is allowed. The impugned order dated 31.05.2013 passed by the Additional District Judge, Court No. 3, Hardoi

is set aside and the application for condonation of delay filed by the respondents is dismissed.

40. As a corollary, the appeal filed by the respondents against the judgment and decree dated 05.11.2014 shall stand dismissed as barred by time.

41. The petitioner shall be entitled to cost of Rs. 50,000/-.