

**(2009) 05 DEL CK 0438**

**Delhi High Court**

**Case No:** CM No. 9215 of 2006 and L.A. App. No. 441 of 2006

Shri Bhim Singh (Since deceased)  
through his legal heirs Shri  
Balbir Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** May 1, 2009

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151, 153
- Land Acquisition Act, 1894 - Section 18
- Limitation Act, 1963 - Section 14, 5

**Citation:** (2010) 8 RCR(Civil) 1859

**Hon'ble Judges:** Vidya Bhushan Gupta, J

**Bench:** Single Bench

**Advocate:** I.S. Dahia, for the Appellant; Sanjay Poddar, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

V.B. Gupta, J.

This order shall dispose of application u/s 5 of the Limitation Act, 1963 (for short as "Act") read with Section 151 CPC, dated 15th May, 2006 filed on behalf of the appellant for condonation of delay of 18 years 196 days in filing the appeal.

2. It is stated that Regular First Appeal filed by the appellant is pending disposal and this appeal is against the award/judgment of reference court dated 3rd August 1987 and order dated 25th September, 1991, by which reference u/s 18 of the Land Acquisition Act was disposed of.

3. Father of the appellant Sh. Bhim Singh died on 19th May, 1985 before the impugned award was passed. The appellant was not aware of the pendency of the reference. On coming to know about the said case, an application for substitution of

his name as legal representative of Sh. Bhim Singh was filed and the same was allowed by Addl. District Judge on 25th September, 1991. After having received the compensation of his father, he assigned the file of the above case to Sh. Raj Pal Singh Yadav, Advocate for filing the appeal.

4. Now about 25 days ago, appellant met one Shri Ram Kishan of his village, who told him that in his case, the compensation has been enhanced by this Court. Thereafter, appellant remembered that he has also engaged the service of Sh. Raj Pal Singh Yadav, Advocate for filing the appeal in this Court about 15 years ago. The appellant attempted to contact Sh. Raj Pal Singh Yadav but his colleagues told that he has shifted to Rewari and on enquiry at Rewari he was also not found there. Thereafter, about 20 days ago the appellant contacted his present counsel and tried to find out the latest position of his case. On enquiry and inspection of the record, it was revealed that no appeal has been filed by Sh. Raj Pal Singh Yadav in respect of the appellant's acquired land before this Court. On the advice of the present counsel, present appeal has been filed bonafidely before this Court.

5. The appellant is semi-illiterate and is not well conversant with the technicalities of law.

6. Supreme Court in case of [Commercial Tax Officer and others Vs. Emkay Investments Pvt. Ltd.](#), has condoned the delay of more than 20 years, observing that the procedural law should not come in the way of substantive justice. This Court has also condoned the delay in filing of appeal for a period of 17 years in RFA No. 154/2001, Kanwal Singh v. Union of India and also in the case of [Standard Pharmaceuticals Ltd. Vs. Gyan Chand Jain and Another](#), in which delay of 18 years was condoned.

7. Keeping in view the facts and circumstances of the case, delay of 18 years 196 days in filing this appeal may be condoned.

8. The application has been opposed by the learned Counsel for the respondent. In its reply affidavit, the respondent has stated that the present application is an abuse of process of law and has been filed in order to prejudice the mind of this Court. No ground as required under the provision of Section 5 of the Act has been made out. The present appeal has been filed after so many years despite the fact that appellant had the knowledge of the impugned judgment and he did not take any steps to file the appeal before this Court. The only plea taken in the present application is that the appellant has assigned the above case to one Sh. Raj Pal Singh Yadav and has paid him fees for filing the appeal. This is nothing but a vague and general allegation deliberately made against the Advocate in order to get a favourable order. The appellant has not shown any documentary evidence that he has assigned the case and given the court fees in order to file the appeal. He has not disclosed anything about the date on which he has given the court fee nor he has disclosed about the name of the colleagues from whom he got the information that

the concerned Advocate has shifted to Rewari. Appellant has not stated as to when he made an enquiry in Rewari and it was found that he was not available. The appellant has also not disclosed as to the date when he received the compensation of his father. The judgments relied by the appellant are not applicable to the facts of the present case. There is total lack of bonafide on behalf of the appellant. No sufficient cause has been shown for condonation of delay of more than 18 years in filing of this appeal.

9. As per appellant's own showing after substitution, he received the enhanced compensation but he has not disclosed as to the date when he received the same. It seems that the appellant accepted the judgment and did not want to file any appeal against the impugned order. Thus, the present application has been filed concealing the above facts which the appellant is supposed to disclose in the present application. Thus the application is not bonafide and the same has been filed with incomplete information and merit dismissal.

10. In rejoinder filed by the appellant he has reiterated the averments made in the application.

11. It is contended by learned Counsel for the appellant that appellant is semi-illiterate with village background and is not well conversant with the technicalities of the law. He was not aware that the compensation in respect of his acquired land has been enhanced by this Court. When this fact came to his knowledge he remembered that he had engaged Sh. Raj Pal Singh Yadav, Advocate for filing the appeal but that Advocate did not file the appeal despite court fees having been paid to him. Thus, there are sufficient cause for condonation of delay.

12. On the other hand, it is contended by learned Counsel for the respondent that the appeal is hopelessly time barred and there is delay of more 18 years in filing of the appeal and no sufficient cause has been shown for condonation of delay and the averments made in the application are absolutely vague and no date has been given as to on which date the appellant engaged Sh. Raj Pal Singh Yadav, Advocate for filing the appeal and when he purchased the court fee. In support of its contentions learned Counsel for the respondent has cited a decision of this Court reported as K.M. Sharma v. Union of India RFA Nos. 36 & 37/2003.

13. Section 5 of the Act, enables a "Court" to admit an appeal or an application after the expiry of prescribed period on sufficient cause being shown for the delay. So, a bare reading of this Section goes on to show that appellant has to show sufficient cause for not filing the appeal in the prescribed period.

14. The case of appellant is that after getting the compensation, he engaged the services of one Advocate Sh. Raj Pal Singh Yadav for filing the appeal in this Court about 18 years ago. Initially Bhim Singh, father of the present appellant had filed a reference before the Court of Addl. District Judge, Delhi and that reference was disposed of on 3rd August, 1987. Thereafter, present appellant moved an

application under Sections 151 and 153 CPC for correction of the cause title and review of the order dated 3rd August, 1987. In that application, it was stated that the father of the appellant died on 19th May, 1985 and the appellant had no knowledge of the pendency of the reference till 15th December, 1985 when other villagers told him about the pendency of the case. Thereafter, he contacted Sh. K.R. Solanki, Advocate and requested him to move an application for impleading him as legal representative and thus, the application was made on 17th December, 1985.

15. Vide order dated 25th September, 1991, the Addl. District Judge, Delhi allowed that application and appellant was impleaded as legal representative of Bhim Singh.

16. So, one fact is clear from appellant's case that with effect from 15th December, 1985 he had the knowledge about the pendency of the reference and thereafter, he has been pursuing this litigation.

17. Now, the reason given for not filing the appeal in prescribed period, is that about 25 days prior to (15th May, 2006), he had met one Sh. Ram Kishan of his village, who told him that in his case, the compensation was enhanced by this Court and thereafter, only appellant remembered that he also engaged the services of Sh. Raj Pal Singh Yadav, Advocate for filing the appeal in this Court, about 15 years ago.

18. Admittedly, appellant had engaged an Advocate at the time of filing the appeal, about 18 years ago. There is nothing on record to show that during these 18 years, he ever bothered to know about the fate of his case. As per appellant's conduct, he remained quite negligent and careless and did not contact his Advocate at all.

19. The appellant has shifted the burden of his carelessness and negligent act on his counsel, Sh. Raj Pal Singh Yadav. In the present application, it is nowhere stated as to on which date, month or year appellant tried to contact his counsel Sh. Raj Pal Singh Yadav and which of his colleague told him, that he has shifted to Rewari. There is also nothing on record to show, as to on which date and during which period, appellant made enquiry at Rewari about his counsel. There is nothing on record to show that Sh. Raj Pal Singh Yadav, Advocate has shifted to Rewari and since when he has shifted there. Moreover, if the counsel for the appellant was negligent and did not inform the appellant for all these 15 years after having obtained court fee from the appellant, then why did the appellant not take any legal action against the counsel. There is nothing on record to show that any written communication was sent by the appellant to know about the whereabouts of his previous counsel. All the averments made in the present application are absolutely vague, afterthought and not supported by any documentary evidence. The judgment cited by learned Counsel for appellant are not applicable to the facts and circumstances of this case.

20. It is well settled that whether delay is to be condoned or not, is the discretion of the Court but the same has to be exercised judicially. The Supreme Court in [Ramlal](#),

[Motilal and Chhotelal Vs. Rewa Coalfields Ltd.,](#) held that;

It is, however, necessary to emphasise 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 u/s 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.

Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only u/s 5 without reference to Section 14.

21. Thus, the explanation given by appellant in not filing the appeal for more than 18 years, is not at all convincing nor it is supported by any documentary evidence. So, no sufficient cause has been made out for condonation of the delay of 18 years 196 days, in filing this appeal. The present application is most bogus one and frivolous and if such like applications are allowed, then no litigation will reach its ultimate end.

22. As no ground is made out for condonation of delay, the application for condonation of delay is, hereby, dismissed.

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In view of the dismissal of application for condonation of delay, the present appeal is time barred and the same is also dismissed with costs of Rs. 5,000/-. Costs be deposited with the trial court within one month from today failing which the trial court shall recover the same in accordance with law.

No order as to costs.

Copy of this judgment be sent to the trial court.