

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

- 1. MC (RFA) 02 (AP)/2014**
- 2. MC (RFA) 03 (AP)/2014**
- 3. MC (RFA) 04 (AP)/2014**
- 4. MC (RFA) 06 (AP)/2014**
- 5. MC (RFA) 09 (AP)/2014**
- 6. MC (RFA) 10 (AP)/2014**

1. MC (RFA) 02 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

.....Applicants

By Advocate:

Ms. G. Deka, Sr. Govt. Advocate.

-Versus-

1. Shri Likha Maj,
Son of Likha Tak,
Naharlagun, Papum Pare District.
2. The Union of India, Represented by the Secretary, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, krishi Bhawan, New Delhi.

3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager (District Manager) Food Corporation of India, Tezpur, Assam.

.....Respondents.

By Advocates:

Mr. S. K. Jain

Mr. S. Tapin, for Rsp. No. 1

Mr. P.K. Roy,

Ms. S.G. Sarmah, SC, Food Corporation of India

2. MC (RFA) 03 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

.....Applicants.

By Advocate:

Ms. G. Deka, Sr. Govt. Advocate.

-Versus-

1. Shri Likha Maj,
Son of Late Likha Tak,
Proprietor of M/s Miya Tom Enterprises, Naharlagun,
Papum pare District, Arunachal Pradesh
2. The Union of India, Represented by the Secretary, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, krishi Bhawan, New Delhi.

3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager(District Manager) Food Corporation of India, Tezpur, Assam.

.....Respondents.

By Advocates:

Mr. S. K. Jain

Mr. S. Tapin, for Rsp. No. 1

Mr. P.K. Roy,

Ms. S.G. Sarmah, SC, FCI

3. MC (RFA) 04 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

.....Applicants.

By Advocates:

Ms. G. Deka, Sr. Govt. Advocate.

-Versus-

1. Shri Takam Tagar @ Pario,
Son of Late Takam Mangha,
Permanent resident of Palin,
Kurung Kumey District, Arunachal Pradesh.
2. The Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, krishi Bhawan, New Delhi.

3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager (District Manager) Food Corporation of India, North Lakhimpur, Assam.

.....Respondents.

By Advocates:

Mr. S. K. Jain

Mr. S. Tapin, for Rsp. No. 1

Mr. P.K. Roy,

Ms. S.G. Sarmah, SC, FCI

4. MC (RFA) 06 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

.....Applicants.

By Advocates:

Ms. G. Deka, Learned. Sr. Govt. Advocate.

-Versus-

1. Shri Takam Tagar @ Pario,
Son of Late Takam Mangha,
Permanent resident of Palin,
Kurung Kum0ey District,
Arunachal Pradesh.
2. The Union of India, Represented by the Secretary, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.

4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager (District Manager) Food Corporation of India, Tezpur, Assam.
6. The Area Manager (District Manager) Food Corporation of India, Dibrugarh, Assam.
7. The Area Manager (District Manager) Food Corporation of India, North Lakhimpur, Assam

.....Respondents.

By Advocates:

Mr. S. K. Jain

Mr. S. Tapin, for Rsp. No. 1

Mr. P.K. Roy,

Ms. S.G. Sarmah, SC, FCI

5. MC (RFA) 09 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

...Applicants.

By Advocates:

Ms. G. Deka, Sr. Govt. Advocate.

-Versus-

1. Shri Likha Maj,
Son of Late Likha Tak,
Attorney Holder on behalf of Smti. Maya Dolo,
Itanagar, Papum Pare District,
Arunachal Pradesh.
2. The Union of India, Represented by the Secretary, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, krishi Bhawan, New Delhi.

3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager (District Manager) Food Corporation of India, Tezpur, Assam.

.....Respondents.

By Advocates:

Mr. S. K. Jain

Mr. S. Tapin, for Rsp. No. 1

Mr. P.K. Roy,

Ms. S.G. Sarmah, SC, Food Corporation of India

6. MC (RFA) 10 (AP)/2014

1. The State of Arunachal Pradesh represented by the Secretary to Govt. of Arunachal Pradesh, Department of Food and Civil Supplies, Itanagar.
2. The Director of Food and Civil Supplies, Govt. of Arunachal Pradesh, Naharlagun.

.....Applicants.

By Advocates:

Ms. G. Deka, Learned. Sr. Govt. Advocate.

-Versus-

1. Shri Likha Saaya,
Son of Likha Heli,
Nirjuli, Papum Pare District,
Arunachal Pradesh.
2. The Union of India, Represented by the Secretary, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, krishi Bhawan, New Delhi.

3. The Joint Secretary to Govt. of India, Ministry of Consumer affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi.
4. The General Manager (Sr. Regional Manager), Food Corporation of India, Regional Officer, Guwahati-7, Assam.
5. The Area Manager (District Manager) Food Corporation of India, North Lakhimpur, Assam.

.....**Respondents.**

By Advocates:

Mr. S. K. Jain
Mr. S. Tapin, for Rsp. No. 1
Mr. P.K. Roy,
Ms. S.G. Sarmah, SC, FCI

:::BEFORE:::

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 12.08.2015

Date of Judgment & Order: 10.09.2015

JUDGMENT & ORDER (CAV)

This batch of Misc. Cases (RFA) has been filed by the applicants-State of Arunachal Pradesh under Sections 5 and 14 of the Indian Limitation Act, 1971, *read with* Rule 2(2) along with OXLI r-3-A of the Code of Civil Procedure, 1908, Chapter-V of the Gauhati High Court Rules praying for condoning the delay of 2404 days in filing the Regular First Appeal against the judgment and decree dated 28-09-2007 passed by the learned Additional District & Sessions Judge, Western Zone, Yupia in Money Suits No. 02, 04, 07, 08, 09, and 11/2007 (FTC) directing the defendants Nos. 5, 6 & 7 to pay the decretal amount to the plaintiff/respondent.

2. The brief facts in the misc. cases, are narrated, as under:

(1). Shri Takam Tagar @ Pario as plaintiff instituted a Money Suit against the present applicants/defendants for realization of

pending bills in connection with PDS carriage contracts (RTC/HTS) amounting to Rs. 77,26,18,785/- which was registered as Money Suit No. 11/2007 (FTC).

(2). The same plaintiff, Shri Takam Tagar @ Pario instituted another Money Suit against the present applicants/defendants for realization of pending bills in connection with PDS carriage contracts (RTC/HTS) amounting to Rs. 58,11,54,090/- which was registered as Money Suit No. 02/2007 (FTC).

(3). Similarly, Shri Likha Maj as plaintiff instituted a Money Suit against the present applicants/defendants for realization of pending bills in connection with PDS carriage contracts (RTC/HTS) amounting to Rs. 44,23,81,500/- which was registered as Money Suit No. 09/2007 (FTC).

(4). The said plaintiff Shri Likha Maj as plaintiff instituted two other Money Suits against the present applicants/defendants for realization of pending bills in connection with PDS carriage contracts (RTC/HTS) amounting to Rs. 3,82,66,431/- and Rs. 1,47,64,978/-, which were registered as Money Suit No. 04/2007 (FTC) and Money Suit No. 08/2007 (FTC), respectively.

(5). Shri Likha Saaya, who was also a plaintiff, instituted a Money Suit against the present applicants/defendants for realization of pending bills in connection with PDS carriage contracts (RTC/HTS) amounting to Rs. 114,32,31,120/- which was registered as Money Suit No. 07/2007 (FTC).

(6). Finally, the Court, allowing the prayer of all plaintiffs, passed the judgment and decree on the same day i.e. dated 28-09-2007, directing the defendant Nos. 5, 6 & 7 to pay the

decretal amount within a period of two months from the date of receipt of the certified copy of the decree/order. It was also ordered that in the event of failure to pay the decreed amount within the period of two months, the plaintiff/respondent shall be entitled for an interest at the rate of 6% per annum from the date of filing of the suit to the date of realization of the said sum/amount.

3. No appeal was preferred against the said judgment and decree dated 28-09-2007 by the present applicants/State. However, the FCI, who was in fact not made a party to the suit, filed a writ petition being WP(C) No.6228/2007 questioning the legality and validity of the judgment and decree, which was however, dismissed by the Court and on appeal preferred by the FCI, the Division Bench of this Court while upholding the judgment and decree of the learned court below, made it clear that FCI is not liable to pay the amount. In the meantime, the execution of the said case was started in the court below and the learned Court below directed the applicants/State to pay the decretal amount and in turn Rs. 5.00 crores was released by the applicant/State and thereafter, while the Court directed for attachment of the properties of the applicants/State, for non-payment in the said execution cases, then, the applicants herein filed a writ petition being WP(C) No. 409 of 2009, which was re-numbered as WP(C) No. 242/2010 at the Principal Seat seeking clarification/declaration of rates of HTS to be applicable in the State of Arunachal Pradesh to assess the rate of bill of the respondent/decreed holder and the said writ petition was dismissed on 18-03-2011 by the Division Bench of this Court.

4. On being unsuccessful, the applicants/State preferred a Review Petition No. 41/2011 before the Division Bench of this Court, which was also dismissed vide order dated 06-09-2011. The applicants/State being aggrieved by the aforesaid orders, filed a Special Leave Petition (Civil) No. 32034-35 of

2011 before the Hon'ble Supreme Court and by order dated 08-05-2012, the Hon'ble Supreme Court stayed the execution proceedings and directed the applicants herein to make some payments to the decree holders, which was continued and subsequently, the applicants herein have stopped the payment raising certain issues with regard to the genuineness of the bills, which was under investigation by the CBI. But the SLP filed by the applicants/State is still pending before the Hon'ble Supreme Court. Now, the applicants/State decided to prefer the appeals and have come-up with the present misc. applications for condoning the delay in preferring the appeals on the following grounds, that:-

(1.). The Respondents No. 3 & 4, i.e. Food Corporation of India (In short FCI only), preferred writ petition, against the said judgment and order, in the principal seat of this Court, being WP(c) No. 6228/2007, questioning the legality and validity of the jurisdiction of the Trial court. In deciding the Suit, this Court stayed the judgment and decree, but, the above writ petition was dismissed by the learned Single Judge and the writ appeal so preferred against the said judgment, was also dismissed by the appellate Court, vide judgment and Order dated 18.06.2009. During the pendency of the writ appeal filed by the FCI, Execution petition was filed by the plaintiff/decreed holder. The Court below, by order dated 25.08.2008 directed the applicants to release the decretal amount in four installments and accordingly, the applicants released Rs. 5 crores. Thereafter, by order dated 25.08.2009 in execution cases, the State Government and its officers were issued notices as to why properties belonging to the State Government should not be attached. Challenging the order dated 25.08.2009 and Circular dated 23.02.2001 for calculation/payment of the bills, the applicants/appellants filed a writ petition bearing WP(c) No. 242/2010 at the Principal Seat, which was dismissed on 18.03.2011 by the Division Bench of the Court. Against the dismissal order dated

18.03.2011, the applicants/appellants filed a Review Petition No. 41/2011 before the Division Bench of this Court in which further proceeding of the execution proceeding was suspended. However, by order dated 06.09.2011 passed by the Division Bench of this Court, the applicants/judgment debtors filed a Special Leave Petition (Civil) No. 32034-35 of 2011. The Hon'ble Supreme Court by order dated 08.05.2012 passed in the said SLP, stayed the execution proceedings, but directed the applicants/judgment debtors under different orders to make some payments to the decree holder/opposite party.

(2). At no point of time, the State Government/applicants has anywhere stated that the applicants will make the payment without verifying the bills or without reimbursement from the FCI or Government of India since the scheme itself is a 100% monitored project of the Government of India and State Government has only to implement the same. That the said SLP is still pending before the Hon'ble Supreme Court. During the pendency of the present litigation in various Courts, it has come to the knowledge of the applicants/Government that the CBI and SIT of the State Government are investigating the transactions which are the subject matter of the present R.F.A and the Money Suit. The applicants has filed several petitions before the Executing Court for stay of the Execution proceedings seeking directions from the Executing Court to help the Government to find out a solution since no payment is made by the FCI or Government of India to the State Govt. and also to get the details of the cases filed by the CBI and SIT. In the event of the investigations if it is found that the claim and bills produced by the respondents/plaintiffs are not genuine, then the Government would not and cannot be force to make any payment since the Judgment and Decree itself will be *ab initio* null and void as per various decisions and judgments of

the Hon'ble Supreme Court and High Courts. The Crime Branch on 30.10.2013 has submitted a report under letter dated 19.11.2013.

(3). The applicants has contended that the State authority has tried their level best to resolve the entire issue relating to Judgment and decree dated 28.09.2007 passed by learned Addl. District and Session Judge (FTC) and to get the same reimbursed from the Food Corporation of India (FCI). That the Hon'ble High Court, Principal Bench in its judgment dated 18.03.2011 in WP (C) No. 242/2010 directed the Union of India, F.C.I and State Govt. to sort out the issue otherwise no purpose will be served by anyone in this matter except those who have raised bills in the matter. That accordingly Govt. of India has constituted a Committee under the Chair of Shri Soumitra Chowdhary which had submitted its report on 02.08.2013 to the Union Government. The Union Government has accepted the report and appointed a Committee to implement the recommendations made in the said report. The Government of Arunachal Pradesh has already initiated the process of verifying the same and expected to complete the exercise in another 6 months time.

(4). The CBI has also registered preliminary Enquiry Registration Reports regarding the transportation claims pertaining to various districts of Arunachal Pradesh and is investigating the same. Though in pursuance to the direction given by the Hon'ble Apex Court, some payments have also been made, but, now genuineness of the bills have been questioned by the CBI and hence, at this stage, the question of further payment of disputed bills may not be appropriate and hence, the State has decided to prefer this First Appeal before this Hon'ble Court. Although the State Government was not impleaded as party in the Suit, mentioned-above, after obtaining the certified copies of all the relevant documents like the plaint, Execution Petition, Written

Statements, Judgment and Decree, the appellants/applicants desired to file a Regular First Appeal, against all the Money Suits.

(6). In the meantime, after lifting of the Model Code of Conduct(MCC) because of the ensuing General Assembly Election and State Assembly Election, in April, 2014, the matter regarding filing of appeal was taken-up.

5. Ms. G. Deka, learned Sr. Govt. Advocate, on the basis of the abovementioned reasons for delay in preferring the First Appeal; has submitted that the delay caused in filing the First Appeal is not due to negligence or intentional on the part of the applicants-State and if the delay is not condoned and the First Appeal is not heard on merit, the State will suffer irreparable loss and injury, which would adversely affect the entire developmental activities in the State as well as crores of rupees from the public exchequer.

6. Supporting her contentions, Ms. Deka, learned Senior Government Advocate, has placed reliance of the following decisions of the Apex Court as well as of this Court, which are, as, under:-

(1). AIR 1996 SC 1623 [State of Haryana Vs. Chandra Moni]

wherein the Apex Court held that Government is an impersonal machinery and the expression "sufficient cause" should be considered with pragmatism in justice oriented approach rather than technical detection of "sufficient cause".

(2). AIR 1996 SC 2750 [Special Tehsildar & Acquisition Kerala Vs. K. V. Ayisumma]

wherein the Apex Court held that it is very difficult to explain the day-to-day delay in case of Government.

(3). (2000) 7 SCC 120 [Uttam Singh Dugal & Co. Ltd. Vs. United Bank of India & ors.]

wherein it has been held court

has jurisdiction to enter judgment for plaintiff to pass decree for admitted claim - object of Order 12 Rule 6 is to enable party to obtain speedy judgment which plaintiff is entitled to.

(4). 2004 ACJ 1381 [National Insurance Co. Ltd. Vs. Tara Chand] wherein by giving liberal construction to 'sufficient cause' and taking a pragmatic approach, delay was condoned.

(5). AIR 2005 SC 2191 [State of Nagland Vs. Lipok Ao & Ors.], wherein the Hon'ble Apex Court held that the Government decision is not a decision of an individual and the ultimate analysis is whether public interest would suffer. The expression of sufficient cause is adequately elastic. 'Sufficient Cause' must receive a liberal construction so as to advance substantial justice and generally delays preferring appeals are required to condone.

(6). 2006(2) GLT 688[State of Tripura Vs. Tripura Government Pensioners' Association]. In the said case, Review Application C.R. 259/95 was allowed on 22.04.1997; WA 330/1997 was dismissed. The Association filed contempt petition No. 32/1997 which was withdrawn on 22.04.1997 on the concession given by the learned Advocate General. However, the State preferred an SLP 17901/2004 which was dismissed on 21.05.2004. Thereafter, a Review application was filed during 2004 and Misc. Case with a prayer to condone the delay. In that case, the delay of 7 years was condoned and order dated 22.04.1997 was reviewed in R.A. 17/2006.

(7). 2008(1) GLT 953 [State of Manipur and Others Vs. A.K. Cycle and Allied Centre] wherein this Court held that if delay

of 2141 days, is not condoned, then crores of rupees will go from public exchequer which is sufficient ground to condone the delay.

(8). 2009(2) SCC 667 [State of Jharkand & ors. V. Ashok Kumar Chokhani & ors.] wherein it has been held by the Apex Court, while deciding an application for condonation of delay in filing the appeal, the High Court could not go to the merit of the same.

(9). 2011(2) GLT 39[State of Tripura Vs. Kausik Roy] wherein this Court held that where the delay is beyond the control of the appellant or in other words, there may be "sufficient cause" for which delay should be condoned.

(10). (2015)3 SCC 569 [Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (Dead) by Legal Representatives] wherein, the Apex Court held that if Court is convinced that there has been an attempt on the part of the Government officials or public servants to defeat the justice causing delay, Court, in view of the larger public interest, should take a lenient view in such situation; condoned the delay, howsoever, huge the delay may be and decided the matter, on merit.

"OBJECTION OF RESPONDENT NO. 1"

7. By filing affidavit-in-opposition-cum-objection, the respondent No. 1/the decree holders raised the objection that as the impugned judgment and decree was a consent decree, as such, no appeal lies against such a decree as per the provision of Section 96(3) of the Code of Civil Procedure, 1908. As filing of appeal is itself barred under the Statute, there can be no question of condoning the delay in preferring the appeal. Further, the appellant/applicant

has to explain the delay of everyday under Section 5 of the Limitation Act, 1965, but the appellant has utterly failed to explain the delay sufficiently and it is a case of deliberate delay and negligence on the part of the applicant to prefer the appeal so the condonation petition/ applications along with the connected RFAs are liable to be dismissed. In his affidavit-in-opposition, the respondents No. 1 has reproduced all the relevant statements of the respondent No. 5, 6 and 7(State and its officials) and defendants No. 3 and 4(officials of FCI) which they made in their written statements acknowledging the claim of the plaintiff(respondent No. 1) and only the fact asserted that due to funds constraint, the payment to the bills of the respondent No. 1(plaintiff, in the said case), be reimbursed and the same will be made available as soon as the fund is made available to the State. On the basis of such admission of liability, the learned Court has passed the impugned order directing the respondents No. 5, 6, and 7; to make necessary payment to the plaintiff concerned. In view of the matters on record, it has been submitted that as the State of Arunachal Pradesh do not have any case, on merit, to adjudicate, there is no convincing reason to condone the delay of around 7 years, whereas, the petitioner was well aware about the decree so passed.

"OBJECTION OF RESPONDENTS NO. 4 AND 5"

8. The respondents No. 4 and 5 i.e. the General Manager, and Area Manager of FCI, respectively, also filed their affidavit-in-opposition, challenging the petition so filed by the applicant by submitting that the appeal itself is hugely time barred and the reasons set forth, are neither factually correct nor legally acceptable, rather, all are misleading statements, which are not at all permissible to condone the delay. Pointing towards the fact that it was the FCI who preferred the writ petition and Writ Appeals No. 206-231 of 2008 which were dismissed on 16.06.2009, by holding, as under:

"In the circumstances, the Court has to understand that the decree under challenge in the present appeal are not effective as against the FCI and the same do not oblige the FCI to make reimbursement to the State Government."

9. At no point of time, the State authority has challenged the judgment and decree of the Court below nor the observation of the Division Bench as mentioned above in the said Writ Appeals. In view of the findings of the Division Bench, as mentioned above, which remain un-assailed, the State of Arunachal Pradesh cannot challenge the decree so passed after a lapse of more than 7(seven) years. From the very contention of the applicants, it can be seen that they wanted solutions with a view to make payment on the bills of the respondents(decree holders) subject to payment for reimbursement of HTS by the Government of India and FCI.

10. It is submitted that in view of factual matrix, the State Government cannot now re-open the whole matter by invoking appellate jurisdiction. Further, the State of Arunachal Pradesh by filing the writ petition No. 409 of 2009, renumbered as 242 of 2010, claim for declarations as regards the rate of HTS and directions for reimbursement of claims made by the Transport Contractors against their transportation bills as per Circular of Government of India dated 23.02.2001. But the same was dismissed after having found that the claim for reimbursement made by the State of Arunachal Pradesh do not conform to the requirement for reimbursement of HTS claims, made in the Government of India circular dated 28.11.1995. It was also found by the Court that the State Government has also received excess amount from the FCI towards HTS claims which are recoverable from FCI. Therefore, the Government cannot pray for condonation of delay of 7 years for filing of Regular First Appeal on the ground that the State authorities have been trying their best to resolve the entire matter to the decree dated 28.09.2007 and to get the same, reimbursed from the FCI.

11. The respondent No. 2, Secretary to the Government of India, Ministry of Consumer Affairs, Food & Public Distribution, and Joint Secretary to the said Ministry, did not contest the case, nor filed any objection.

"ARGUMENT OF RESPONDENT NO. 1(DEGREE HOLDER)"

12. The arguments advanced by the learned Senior counsel for respondent No. 1, is that no appeal could have been filed in view of the bar under Section 96(3) of the Code of Civil Procedure, 1908 since the decree, in question, has been passed with the consent of the parties, no regular appeal is maintainable under Section 96 of the Code of Civil Procedure, 1908. The learned Senior Counsel further submitted that the defendants/applicants-State and the defendants/FCI, in their written statement, before the Trial Court, have admitted to the claims made by the plaintiff/respondent and stated that the payment of the amount could not be made due to paucity of funds of the State Government. However, the State Government is ready to make the payment within a reasonable time which would be reimbursed by the FCI within the time frame prescribed by the guidelines of HTS payment.

13. The learned Senior Counsel further submits that the decree was passed on 28.09.2007 and the application for condonation of delay in preferring the appeal has been filed in 2014 but no sufficient cause even for a single day delay has been explained under Section 5 of the Limitation Act. The defendants/appellants have admitted the claim and stated that they are trying to resolve the issue with the Central Government. As the Central Govt. has constituted a committee, reference to which, various orders have been passed by the Hon'ble Supreme Court as well as the execution Court, the plea itself taken by the defendants/appellants itself cannot be a ground for condonation of delay as the entire proceedings were initiated against the State Government, part payment against the decree has been made by the State Government and the work order was also placed by the officers of the State Government. Even

otherwise also, if the matter is being enquired upon by CBI, that cannot be a ground for condonation of delay as the stand of the State Government is contradictory in nature and they are trying to wriggle out of the matter by hook or crook on the pretext of paucity of funds, which cannot be a ground for entertaining the appeal after 6 years 10 months of the suit having been decreed.

14. Mr. Jain, learned Senior Counsel has also submitted that the said delay was intentionally caused by the applicants-State and they failed to prefer appeal within the time in spite of sufficient time and opportunity but instead of filing appropriate appeal, they had gone for unnecessary litigations on numbers of occasions and when they failed in all resorted litigations, the applicants/State have come up with the present application for ulterior motive without even explaining the cause of delay for about 7 years, which barred by the sections 5 and 14 of the Limitation Act in filing regular appeal against the judgment and decree, therefore, the present application is liable to be dismissed with cost.

15. In support of the submissions, Mr. Jain, learned Senior Counsel, has placed reliance on the following citations, as below:

1. (2001)9 SCC 106 [Vedabai Alias Vadayanatabai Barurao Path Vs. Shantaram Baburao Patil and Others], wherein it has been held that in exercising the discretion under Section 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case in which delay is inordinate and in case in which delay is few days.

2. (2010)8 SCC 685 [Balwant Singh v. Jagdish Singh & ors.] wherein by endorsing the above principle of liberal approach, while considering such delay, it has also been held that even if sufficient cause has to be received, liberal construction, it must

squarely fall within the concept of reasonable time and proper conduct of party concerned. Liberal construction cannot be equated with doing injustice to other party. The test to judge whether or not a cause is sufficient to see whether it could have been avoided by the party by exercising due care and attention.

3. (2012)5 SCC 157 [Maniben Debraj Shah v. Municipal Corporation of Brihan, Mumbai] wherein it has been held that while considering sufficient cause, substantive right of parties should not be ignored. Distinction must be made delay of few days and inordinate delay causing prejudice to other side. No premium can be given for total lethargy or utter negligence of the State machinery and condonation of delay caused by such officers cannot be allowed as a matter of force by accepting the plea that dismissal on the ground of limitation will cause injury to the public interest.

4. (2012)12 SCC 693[B. Madhuri Goud v. B. Damodhar Reddy] wherein it has been reiterated that discretion to condone delay should be based on not on length of delay but on sufficient and satisfactory explanation.

5. (2013)12 SCC 649[Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & ors.] stressed on the point of need for bona fide while considering sufficient cause to condone the delay.

6. (2015)1 SCC 680[H. Dohil Constructions Company Pvt. Ltd. v. Nahar Exports Ltd. & ors.] while dealing on such inordinate delay in filing the appeal, an application for condonation thereof, it has been held that scale of balance of justice required to be made in respect of both parties even if delay pertains to re-filing

of appeal. Stringent scrutiny of appellants explanation needed to determine the sufficiency of cause of such delay.

16. The above findings is indicative of the fact that the applicant as State Respondents was aware of the decree so passed but never choose to challenge the decree and as has been discussed above, they even choose to pay some part of the decretal amount to the plaintiffs in accordance with execution of the decree and ultimately has choose to prefer the appeal without any convincing reasons and for which, it has come up with the condonation applications, which, however, does not deserve any merit in view of the disclosure statements against the applicants.

17. As regards the plea of the applicants that the FCI has challenged the decree by writ petition and writ appeal, etc., it is to be noted from the copy of the order so filed in this case that the FCI never challenged the findings of the decree save and except the fact that they are not liable to reimburse the decretal amount to the State Respondents and thus, the same has been approved by the order of the writ appeal, as mentioned above.

18. The petitioner, however, did not assign any reason whatsoever, to wait for the outcome of the writ petition because writ jurisdiction and forum of appeal is quite different forum. That apart, the State was also a party in the said writ petitions and the learned Advocate General, Arunachal Pradesh, representing the State; in the said writ proceedings and has supported the findings of the Court below and never challenged the decree given by the trial Court.

19. Some relevant portions of the findings of the Writ Appeals No. 206 to 2013 of 2008[dismissed vide judgment & order dated 16.06.2009], as in Paragraphs No. 9, 16 and 24; are reproduced herein, below, for better appreciation of the matter, at hand:

"9. The aforesaid decrees were put to challenge before the learned Single judge under Article 226 of the Constitution in the writ petitions filed by the present appellants. Two principal grounds were urged in support of the challenge made. The first is with regard to the power and jurisdiction of the Court of the learned Additional District and Sessions Judge (FTC), Yupia to hear and dispose of civil suits arising within the territories of the State of Arunachal Pradesh. In this regard, the principal contention made was to the effect that no such power can be understood to have been vested by law in the learned Trial Court. The second ground urged is that through the decrees passed in the suits are against the FCI, the FCI was not made a party defendant in the suit. The impleadment of the two officers of the FCI as defendant Nos. 3 and 4 does not tantamount to impleading the FCI, a statutory body, as a principal defendant in the suit. Yet by the impugned decrees, an obligation has been cast on the FCI as the payments ordered by the decrees being under the "Hill Transport Subsidy", the amounts paid by the State Government to the contractors like the plaintiffs are reimbursable by the FCI to the State Government."

"16. Shri N. Dutta, learned Advocate General, Arunachal Pradesh has submitted that the amounts due to the contractors under the decrees passed by the learned Trial Court in the present group of cases has to be reimbursed to the State Government by the FCI. On its own the State Government is not in a position to make any payment under the decrees. In this regard, Shri Dutta has pointed out that there has been a practice of making available rolling advances which, on being adjusted, leads to further advances for payment to the contractors. Shri Dutta has also pointed out the claim of the plaintiffs, the learned counsel has urged, no fault can be found with the impugned decrees. The learned counsel has, therefore, contended that the conclusion of the learned Single Judge that he writ petitions challenging the decrees should be dismissed cannot be

flawed and in the facts and circumstances of the present cases no other conclusion is warranted. It is further submitted that the present appeals deserve to be dismissed leaving the plaintiffs with the remedy of obtaining relief under the decrees in accordance with law.

"24. The operative part of the judgment of the learned trial Court extracted in an earlier paragraph of this order indicates that what has been expressed by the learned Trial Court is a hope and wish that the FCI would reimburse the State Government. The terms of the identical decrees passed by the learned Trial Court, which has also been directed to pay to the plaintiffs the amount covered by the decrees. There is no direction, either in the judgments or in the decrees following the judgments, to the FCI to reimburse any amount to the State Government after the State Government pays to the plaintiffs the amounts covered by the decrees. The liability of the FCI to make any such reimbursement, therefore, has not been formally adjudicated upon by the learned Trial Court nor has the right of the State Government and the corresponding obligation of the FCI with regard to any reimbursement been conclusively determined by the learned Trial Court. In such circumstances, the Court has to understand that her decrees under challenge in the present appeals are not effective decrees against the FCI and the same do not oblige the FCI to make any reimbursement to the State Government. If that be so, the very foundation of the challenge made by the FCI against the decrees in question has necessarily to fall through. We, therefore, arrive at the same conclusion as recorded by the learned Single Judge that the writ petitions should be dismissed though for reasons different. Accordingly, all the appeals are liable to be dismissed."

"ARGUMENTS ADVANCED ON BEHALF OF RESPONDENTS NO. 4 & 5"

20. Mr. Roy, learned counsel assisted by Mrs. Sarmah, learned standing Counsel appearing on behalf of the respondent Nos. 4 & 5, has referring to the

objection so filed, has urged before this Court that in view of the order so passed by the appellate Court, in WA 206 of 2008, the respondent No. 4 and 5/FCI, is not under the obligation to reimburse the decretal amount to the State Government so they have nothing to do to deal with the matter. Moreover, it has also been contended that the petitioner never challenged the decree at any point of time nor they challenged the findings of writ appeal. So their intention to prefer an appeal after 7 years of delay cannot be acceptable.

"FINDINGS"

21. In view of the legal pronouncements, let us appreciate that the factual matrix of the matter, in hand. On appreciation of ground of appeal, as it is found, the applicant at no point of time, challenged the judgment and decree so passed by the Court below. The submission that the State Government was not party to the said Suit, cannot hold good in view of the fact that the respondent No. 5, 6, and 7; who were prime respondents to the case; appearing on behalf of the State Respondents, being Secretary and other higher officers to the State Government has categorically admitted the claim of all the plaintiffs in the above referred cases, which has ultimately resulted in the consent decree. Further the above referred stand of the said respondents, was known to the petitioner and they never challenged such state of affair even though when they made party in the execution case in the year 2008. What was the part played by the applicant while appearing in the execution case, reveals that they readily pay the part of decretal amount and virtually they paid more than Rs. 5 crores against the decretal amount at different times against the said execution case since 2008 onwards and only when they failed to pay the decretal amount in four installments as directed by the executing Court, finally, by order dated 25.08.2009, the executing Court issued writ of attachment of the properties of the petitioner, then the petitioner sought for a declaration by filing a writ petition as to under which Circular the amount of HTS bills is to be assessed and which is required to be paid to the

respondents/decreed holders. For that purpose, writ petition was filed and it was dismissed and a review petition against the said judgment was also dismissed.

22. The very conduct of the petitioner/applicant itself reveals that inspite of knowing the order at the time of execution of decree thereof, on the next year of the decree, they never intended to challenge the aforesaid judgment and decree and go on paying the decretal amount before the executing court as directed by the executing Court as well as by the Apex Court which they moved the SLP 20324-35/2011. Though initially, the Apex Court stayed the execution, but directed the applicant to make some payment to pay the decree holder but as the applicant failed to deposit the amount as directed, so the Apex Court vacated the stay order so granted earlier which reveals from the documents so filed by the respondent side. **Apparently, the applicant has not acted bona fide to challenge the decree and it depicts a picture of sheer negligence and lack of due diligence on the part of the petitioner.**

23. To support the contentions that the genuineness of the bills of the decree holders has been questioned by the CBI, not a single document has been produced before this Court, that the bills pertaining to the respondents/decreed holders has been found to be dubious. Pointing towards the one document, it is argued by the learned counsel for the respondent No. 1, it has been urged that CBI or SIT is not investigating the transaction involved in the money decree because period of investigation carried out by CBI is for 2001 to March 2003 but while the period covered under the decree is for the Months of April 2004 to March 2006 so it cannot be a ground to challenge the genuineness of the bills, as such, a belated stage, which is again not supported by any authentic documents. The mere apprehension of the petitioner, in this respect, cannot be a ground to condone the delay.

24. After going through all the pleas of both parties, ground of appeals, and reply of the respondents as well as the impugned judgment and order and different pronouncement in the writ petitions as well as writ appeals, what transpires, that the petitioner on its own volition did not choose, to challenge the judgment and decree, rather in satisfaction of the decree, they had made payments either before the executing Court or in the Apex Court. The State/petitioner has taken contradictory stand while it was stated that they are trying to resolve the issue with the help of central government and on the other hand, he stated that being bill transactions under the decree, to be found to be a dubious(which is factually not proved) and as such, their submissions is totally unsatisfactory and not convincing. As has been discussed above, for condoning the delay, sufficient and convincing reasons is to be assigned to condone the delay but the petitioner could not brought his case up to the mark. **The lethargy so rendered by the petitioner/applicant has rendered their case, unacceptable. Moreover, their reasons are not time specific and no plausible explanation has been given to justify their inaction so as to challenge the decree. As has been held by the Apex Court in *Manibhen Debraj* (supra), no extra premium can be given for total lethargy or utter negligence on the part of the State officers.**

25. In the case of *Balwant Singh*(supra), it has been held by the Apex Court in **Paragraph No. 26**, as under:

"26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a

result of negligence, default or inaction of that party. Justice must be done to both parties equally, then alone for the ends of Justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in Law as a result of his acting vigilantly.”

26. Keeping in view the above pronouncements as well as factual aspect of the matter, it is found that the respondent/Decree holder is already under the impression that the decree has been passed on consent and certain portion of decretal amount has also been paid to the decree holder and in case of re-opening the decree and judgment by condoning the delay, around 7 years, for the inaction of the petitioner itself, would defeat the justice of the decree holder who has obtained the decree on consent. It is not a case of ex parte decree behind the back of the applicants. It is a settled law that one has to act vigilantly and with due care and caution so as to prevent injustice to be done. The mere submissions that the public interest will be defeated in case of denial of condoning the delay, is found to be mere uproar in absence of any related evidence in this respect as has been discussed above.

27. This Court is of the opinion that the case laws relied by the applicants will not be helpful to rescue them from the above findings as the factual aspect of the case of applicants is quite different than that of the facts as enunciated in those case laws.

28. From the findings and discussions as made above, it can be arrived at that it is not a case of filing of cases in wrong forum as has been submitted by applicants to get the benefit of Section 14 of Limitation Act, nor a case has been made-out to condone the delay under section 5 of the said Act. Prayer for condonation of delay of the misc. applicants/State of Arunachal Pradesh, is hereby rejected.

29. In view of the above, all the misc. applications, referred to in this judgment and order, are hereby dismissed. However, there shall be no order as to costs.

JUDGE

Bhaskar