## SPECIAL CIVIL APPLICATION

*Before the Hon'ble Mr. Justice Anant S. Dave*

PETRO POLYOLS LTD. & ORS. v. REGIONAL MANAGER, GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION, SURAT & ORS.*

**Limitation Act, 1963 (36 of 1963) — Secs. 5 & 14 — Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (12 of 1973) — Sec. 9 — Condonation of delay in appeal — Held, explanation of delay has to be reasonable/plausible — Valuable right accrued in favour of other party as a result of negligence/inaction of applicant cannot be taken away on a mere asking — Further, time spent in pursuing remedy before a forum which is not a wrong forum and remedy not a mistaken one, but a conscious decision not excluded under Sec. 14 — Considering that explanation not reasonable and that equity has changed substantially, the Court declining to condone delay.**

સમય-મર્યાદા અધિનિયમ, ૧૯૬૩ — કલમ ૫ અને ૧૪ — ગુજરાત જાહેર સ્થળો (બિનઅધિકૃત કબજો/વસવાટ કરનારને ખાલી કરાવવાનો) અધિનિયમ, ૧૯૭૨ — કલમ ૯ — અપીલ કરવામાં વિલંબ બદલ માફી — ઠરાવવામાં આવ્યું કે, વિલંબ બાબતની ચોખવટ વાજબી અને સાચી હોવી જોઈએ — અરજદારની બેદરકારીને કારણે/અરજદારની કાર્યવાહીના અભાવમાં બીજા પક્ષની તરફેણમાં ઊભો થયેલ કિંમતી હક્ક માત્ર પૂછવાથી છીનવી શકાય નહિ — વધુમાં, ફોરમ કે જે ખોટું ફોરમ ન હોય તેમાં ઉપાય કરવો જે ક્ષતિગ્રસ્ત નથી તેમાં વ્યય થયેલ સમય જે સભાન નિર્ણય છે તે કલમ ૧૪ હેઠળ ઉવેખી શકાય નહિ — વિચારણામાં લેતાં કે ચોખવટ વાજબી નથી તેમજ પરિસ્થિતિ ઘણી જ બદલાઈ હોવાથી, અદાલતે વિલંબ માફ કરવાનું નકાર્યું.

Sufficient cause, as contained in Sec. 5 of the Limitation Act was considered in light of earlier decisions and held that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of the reasonable time and proper conduct of the party concerned. (Para 7.8)

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 the party. Justice must be done to both the parties equally. The Apex Court further held that the explanation has to be reasonable or plausible. (Para 7.8)

Nowhere in the application for condonation of delay any specific pleading/averment/contention was raised about exclusion of time under Sec. 14 of the Limitation Act and in absence of specific plea, the concerned Court was not supposed to deal with such contention based on applicability of Sec. 14 of the Act. (Para 7.12)

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*Decided on 7-9-2012. Special Civil Application No. 11868 of 2009.

Besides, no mistaken remedy or selecting a wrong forum in taking recourse of the earlier writ proceedings can be discerned from the averments in the application for condonation of delay. A conscious decision was taken to move High Court on the basis of the expert legal advice of the competent lawyers and there was delay in filing application for condonation of delay and grounds for absence of lawyer due to vacation were irrelevant. No prompt action is taken even after rejection of writ petition by learned Single Judge, and thereafter, also caused delay in getting certified copy of the order of Letters Patent Appeal. (Para 7.17)

Equity had changed substantially and against expenditure incurred by the petitioners, so submitted by the learned Advocate for the petitioner of Rs. 15 crores, respondent No. 4 has invested about Rs. 22,000 crores towards infrastructural facilities and installation of plant and machinery. (Para 7.18)

***Cases Relied on :***

(1) *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai,* 2012 (3) GLR 2299 (SC) : 2012 (5) SCC 157
(2) *State of Nagaland v. Lipok A.O.,* 2005 (3) SCC 752
(3) *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department,* 2008 (7) SCC 169

***Cases Referred to :***

(1) *Balwant Singh (Dead) v. Jagdish Singh,* 2010 (3) SCC 685
(2) *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by L.Rs.,* 2008 (8) SCC 321
(3) *Shakti Tubes Ltd. Through Director v. State of Bihar*, 2009 (1) SCC 786
(4) *Rameshwarlal v. Municipal Council Tonk*, 1996 (6) SCC 100
(5) *Laxmidas Morarji (Dead) by L.Rs. v. Miss Behrose Darab Madan*, 2010 (1) GLR 825 (SC)
(6) *HBM Print Ltd. v. Scantrans India Pvt. Ltd.*, 2009 (17) SCC 338 : MANU/SC/7259/2007
(7) *P. Sarathy v. State Bank of India*, 2000 (5) SCC 355
(8) *Karim Abdulla v. Heirs of Deceased Bai Hoorbai Jama*, 1975 GLR 835
(9) *Collector, Land Acquisition v. Katiji*, AIR 1987 SC 1353
(10) *Bhikhabhai Mavjibhai Patel v. State of Gujarat*, 1994 (1) GLR 151
(11) *Maganbhai Govanbhai Patel v. State of Gujarat*, 2009 (1) GLR 82
(12) *Lanka Venkateswarlu (Dead) by L.Rs. v. State of Andhra Pradesh*, 2011 (4) SCC 363
(13) Letters Patent Appeal No. 148 of 1996 decided on 3-5-1996 by Guj.H.C.
(14) *Vedabai @ Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil,* 2001 (9) SCC 106
(15) *Ketan V. Parekh v. Special Director, Enforcement,* AIR 2012 SC 683

*B. J. Shelat,* for *Udayan P. Vyas,* for Petitioner Nos. 1 to 4.
*Pranav Trivedi* for *M/s. Trivedi & Gupta,* for Respondent No. 2.
*Dharmesh C. Gurjar,* A.G.P., for Respondent No. 3.

*K. S. Nanavati,* Senior Advocate with *Keyur Gandhi*, for Nanavati Associates, for Respondent No. 4.

**ANANT S. DAVE, J.** This petition under Arts. 226 and 227 of the Constitution of India is filed by the petitioners challenging the order dated 8-5-2009 passed by the learned 6th Additional District and Sessions Judge, Surat by which application for condonation of delay being Application No. 58 of 1996 filed under Sec. 5 of the Limitation Act, 1963 (for short, 'Limitation Act') preferred by the petitioners seeking condonation of delay of about 23 days in filing the appeal under Sec. 9 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (for short, 'the G.P.P. Act'), came to be rejected.

**2.** The brief facts leading to filing of petition are stated as under :

**2.1.** As early as on 4-3-1986 a decision was taken by the respondent No. 2 to allot land in favour of Shri P. S. Sahni for setting up the 'Petro Polyols Project', and accordingly, on 27-3-1986 the respondent No. 2 allotted the said land admeasuring around 1,61,880 square metres of Survey No. 148 and 148P at village Mora, Taluka Choryasi, District Surat to Shri P. S. Sahni. On 14-8-1999, office of the Industry Commission, Ahmedabad sent a letter that Reliance Gas Cracker Plant was expected to commence its production by mid, 1991. Shri Sahni being a Non-Resident Indian had to make a short visit and intimation was sent to respondent-G.I.D.C. about his address at London. In the meanwhile, show-cause notice dated 20-5-1993 was issued by respondent-G.I.D.C. rescinding the allotment of the said land. On 27-6-1993 order of cancelling allotment was passed. Thereafter, show-cause notice dated 27-7-1993 under the provisions of Sec. 4(i) of the G.P.P. Act was issued and finally on 18-8-1993 order of eviction under Sec. 5(i) of the G.P.P. Act came to be passed. The above order was executed on 20-9-1993 and possession of the land in question came to be taken over on 27-9-1993. The said land subsequently was allotted to respondent-Reliance Industries Ltd.

**2.2.** Two notices dated 5-4-1994 and 6-7-1994 were addressed by the petitioners to the respondent-G.I.D.C. through their Advocate seeking information regarding illegal cancellation of allotment and the details of the persons to whom the said land was illegally allotted since it is the case of the petitioners that neither the show-cause notice dated 20-5-1993 nor order dated 27-6-1993 by the G.I.D.C. of rescinding/cancelling the allotment nor the show-cause notice dated 27-7-1993 and order of eviction dated 18-8-1993 passed by competent authorities in exercise of powers under Secs. 4 and 5 respectively of the G.P.P. Act came to be served upon the petitioners.

However, it is the case of the petitioners that they were neither aware about the action of rescinding/cancelling the allotment by G.I.D.C. nor the

show-cause notice and order passed by the competent authority under the G.P.P. Act.

**2.3.** A writ petition being Special Civil Application No. 11645 of 1994 was filed by the petitioners under Art. 226 of the Constitution of India on 23-9-1994 against the respondents. Upon filing counter-affidavit and on completion of pleadings and on perusal of the files as called for, learned Single Judge by order dated 14-12-1995 rejected the writ petition in absence of merit. Being aggrieved by and dissatisfied with the above order the petitioners-appellants filed *Letters Patent Appeal No. 148 of 1996* and Division Bench of this Court by oral judgment *dated 3-5-1996* confirming the order passed by the learned Single Judge, disposed of the L.P.A.. However, in the opinion of the Division Bench, certain findings of facts regarding service of the notices/orders issued by respondent-G.I.D.C. for rescinding allotment as well as show-cause notice and order under the G.P.P. Act being findings of complicated questions of facts ought not to have been recorded in exercise of jurisdiction under Art. 226 of the Constitution of India. Further, the Division Bench, kept it open for both the parties to agitate the question regarding service or non-service of the said notices/orders by taking appropriate proceedings before the appellate authority and that findings recorded by learned Single Judge regarding the proper and valid service of notice would not be binding on the appellate authority and the appellate authority will be at liberty to come to its own conclusion, rejected the Letters Patent Appeal. It was kept open for the parties to raise contentions regarding merit of notices/orders before the appellate authority. Further, the Division Bench in its opinion left it to the discretion and jurisdiction of the appellate authority to consider and decide the question of condoning delay in case of appellants-petitioners desirous of approaching the appellate authority. It was further held that the proper remedy for the appellants-petitioners were to go before the appellate authority either by way of preferring appeal under Sec. 9 of the G.P.P. Act or to go before the Civil Court to get a declaration as regards order of eviction passed under the said G.P.P. Act or simultaneously to have both the proceedings as per the advice, the appellants may get. Finally, the Division Bench held that the question arrived at by the learned Single Judge of rejecting writ was quite legal and proper and confirmed the same on the ground that the matter involves complicated questions of facts which could not be decided in the discretionary jurisdiction under Art. 226 of the Constitution of India and in the result the order passed by the learned Single Judge was confirmed and the Letters Patent Appeal was disposed of accordingly.

**2.4.** According to petitioners certified copy of the order dated 3-5-1996 was received by the petitioners on 7-6-1996 at their address in England.

They approached their lawyer in Delhi, in turn, they tried to establish contact with a local lawyer in Surat in whose jurisdiction appeal under Sec. 9 of the G.P.P. Act was to be filed. However, the local lawyer at Surat was out of India, and therefore, they could not contact him. Thus, there was a delay in filing the appeal. Accordingly, the appeal was filed under Sec. 9 of the Act before the appellate authority/District Court under the G.P.P. Act on 16-7-1996. Since, there was delay in filing the said appeal, an application for condonation of delay was also preferred being Delay Condone Application No. 58 of 1996, which came to be rejected by order dated 8-5-2009 passed by the learned 6th Additional District & Sessions Judge, Surat. Hence, the present petition. It is to be noted that the above Delay Condone Application No. 58 of 1996 remained pending before the learned 6th Additional District and Sessions Judge, Surat for about 13 years.

**2.5.** Certain facts as stated by the petitioners are not accepted by the respondents. It is the say of the respondent that in spite of the allotment of the subject land made to the petitioners on 4-3-1996 and possession was handed over on 27-3-1986, no action was taken in accordance with the terms and conditions of the allotment. Therefore, after issuing show-cause notice, the G.I.D.C. has cancelled the allotment. The notice and order, as above, and notice as well as order of eviction under G.P.P. Act, were also issued and served at the addresses of the petitioners known to the respondents. However, the petitioners instead of taking action of availing efficacious statutory remedy under the G.P.P. Act, filed writ petition under Art. 226 of the Constitution of India, and reference is made to the notices issued by the petitioners and the address as shown in the above legal notices as well as of writ petition are one and the same and the show-cause notice and order of eviction under G.P.P. Act were served upon the petitioners on the said address only.

**3.** Shri B. J. Shelat, learned Counsel for the petitioners would contend that the appellate authority/learned Additional District and Sessions Judge, Surat erred in exercising jurisdiction by rejecting application for condonation of delay by not appreciating and considering grounds pressed into service by the petitioners/applicants therein, in terms it was stated by the applicants that they were pursuing lawful remedy by filing writ petition being Special Civil Application No. 11645 of 1994 before this Court since the petitioners were not served with either notices or orders passed by G.I.D.C. and the competent authority under the G.P.P. Act. Therefore a specific prayer was made before this Court seeking direction against the respondent-authorities to hand over possession of the subject land. It was also emphasised that findings of learned Single Judge about service of communication of notice and orders to the petitioners in oral judgment dated 14-12-1995 in Special

Civil Application No. 11645 of 1994 were disapproved by Division Bench in the oral judgment and *order dated 3-5-1996* passed in *Letters Patent Appeal No. 148 of 1996*. Even as per the Division Bench question regarding service or non-service of said notices and/or orders was to be agitated before the appropriate Court and findings of learned Single Judge on this aspect would not be binding to the said Court and keeping it open for the Court to give its own conclusion. Therefore, rejection of application to condone delay on the ground that writ petition as well as Letters Patent Appeal was rejected by the High Court was non-application of mind and could not have been made basis for passing such order. That another ground which weighed with the Court below was about taking an independent remedy before the Civil Court at Ahmedabad by which relief was sought for against respondents for rescinding contract as well as cancelling the allotment and other directions. Learned Counsel for the petitioners assailed the findings about inaction on the part of the petitioners and their Advocates in filing appeal and application for condonation of delay after dismissal of Letters Patent Appeal and writ petition by this Court. That specific findings about filing of appeal within 15 days from the knowledge of the order of eviction on 14-11-1994 that it was passed on 19-8-1993, the delay was inordinate as the limitation prescribed under Sec. 9(2)(a) is if 15 days from the date of receipt of the order passed under Sec. 9 of the G.P.P. Act. It is further submitted that the above findings for not accepting sufficient cause as required under Sec. 5 of the Limitation Act and to exclude the period of proceedings of writ petition as well as Letters Patent Appeal undertaken by the petitioners in this Court under Sec. 14 of the Limitation Act by the appellate authority/ Court are contrary to law and pronouncement of this Court as well as the Apex Court on the subject of parameters to be considered by the Court while considering such application for condonation of delay under Secs. 5 and 14 of the Limitation Act apply.

**3.1.** It is, therefore, submitted that rejection of application for condonation of delay would defeat cause of the case *viz*. appeal preferred by the petitioners under the Act against the order of eviction by taking legal and liberal view, the petitioners may be permitted to pursue lawful remedy of appeal by allowing this writ petition.

**4.** Shri K. S. Nanavati, learned Senior Counsel for respondent No. 4 would contend that the petitioners, who are indolent and negligent throughout the proceedings who failed to show sufficient cause to condone the delay as required under Sec. 5 of the Limitation Act as well as exclusion of time taken pursuing remedy before the forum without jurisdiction, order passed by Court below in absence of any illegality *qua* exercise of jurisdiction and/ or otherwise the petition under Arts. 226 and 227 of the Constitution of India

deserves to be rejected. Learned Senior Counsel highlighted certain factual aspects about initial allotment and possession of the land as early as in March, 1986 and respondent No. 4 was allotted the subject land by respondent-G.I.D.C. in or around October, 1993, legal notices issued with the aid, assistance and advice of experienced and competent Advocates of New Delhi and taking recourse of filing writ petition under Art. 226 of the Constitution of India in spite of availability of not only alternative and/or efficacious remedy, but statutory remedy under the Act and waiting for substantial period even after writ petition and Letters Patent Appeal came to be dismissed show a complete inaction on the part of the petitioners. Therefore, even if observations made by the Division Bench in *Letters Patent Appeal No. 148 of 1996* in its order *dated 3-5-1996*, no direction was given to the Court of appeal/appellate authority to consider and/or to condone delay if any in filing appeal by the petitioners. On the contrary, the appellate authority/Court were given liberty to consider rival submission of the parties respectively in accordance with law. Learned Senior Counsel also referred to address of the petitioners as shown in the communication, legal notices, writ petition and changing of its address at the stage of filing Letters Patent Appeal and pointed out requirement of provisions of the G.P.P. Act, limitation contained therein of filing appeal within 15 days from the receipt of the order of eviction and more particularly the delay and inaction on the part of the petitioners after dismissal of Letters Patent Appeal. It is next contended that not only that there was no sufficient cause, but Sec. 14 of the Limitation Act was not available to the petitioners as they were pursuing proceedings before the Court of competent jurisdiction and alternatively even if Sec. 14 is applied, it was to commence on 27-6-1993 when the G.I.D.C. had already taken over possession and proceedings filed. In the context of reasoning of findings of learned appellate authority, Shri Nanavati, learned Senior Counsel, has invited attention of this Court to the application of condonation of delay preferred by the petitioners and grounds stated therein would reveal that the petitioners-applicants were N.R.Is. and were staying at U.K. and had communicated their new address to G.I.D.C. and in absence of service of notices of orders by G.I.D.C. they were not aware about the proceedings initiated by G.I.D.C. rescinding/cancellation of allotment and passing of order of eviction. That another ground was about voluminous documentary evidence was not available at the time of filing of application and local Advocate was out of India during summer vacation, it is submitted that nowhere in the above application for condonation of delay either pleadings were made or prayer about exclusion of the period under Sec. 14 of the Limitation Act of initiating proceedings in this Court in the form of writ petition as well as Letters Patent Appeal and that the prayer clause only contain to condone delay, if any.

**4.1.** Therefore, according to learned Senior Counsel, it is not only the delay for which liberal approach is to be adopted, but while exercising powers this Court may consider the possibility or prejudice likely to cause or already caused to other party and whether the Court should assist indolent or negligent litigant who would change the equity in the context of financial investment and infrastructure created by respondent No. 4.

**5.** Learned Counsel appearing for the respondent-G.I.D.C. has relied on the affidavit filed and adopted the arguments canvassed by learned Senior Counsel appearing for the respondent No. 4.

**6.** Shri B. J. Shelat, learned Counsel for the petitioners relied on the *bona fide* persuasion of the proceedings in absence of non-service of notices and orders passed by G.I.D.C. as well as under the G.P.P. Act and submits that Secs. 5 and 14 of the Limitation Act apply in different situations and further in haste re-allotment was made to respondent No. 4 when even final order of cancellation of allotment was not passed by the G.I.D.C. and non-consideration of the above submissions of the petitioners would render petitioners remediless.

**7.** Taking into consideration rival submissions of learned Counsels appearing for the parties, perusal of the record, including the order impugned, it is necessary to refer to provisions of Secs. 5 and 14 of the Limitation Act and Sec. 9 of the G.P.P. Act :

"5. *Extension of prescribed period in certain cases :-* Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

*Explanation :-* The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section."

"14. *Exclusion of time of proceedings* bona fide *in Court without jurisdiction :-* (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court when, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceedings, whether in a Court of first instance or of appeal or revision,

against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-sec. (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

*Explanation :-* For the purposes of this Section -

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceedings was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

Section 9 of Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 :

*Appeal :* (1) An appeal shall lie from every order of the competent officer made in respect of any public premises under Sec. 5 or Sec. 7 to an appellate officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer in that district who has for at least ten years held a judicial office in the State as the District Judge may designate in this behalf.

(2) An appeal under sub-sec. (1) shall be preferred -

(a) in the case of an appeal from an order under Sec. 5, within fifteen days from the date of the service of the order under sub-sec. (1) of that Section; and

(b) in the case of an appeal from an order under Sec. 7, within fifteen days from the date on which the order is communicated to the appellant :

Provided that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of a competent officer, the appellate officer may stay the enforcement of that order for such period and on such condition as he deems fit.

(4) Every appeal under this Section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this Section be in the discretion of the appellate officer.

(6) For the purposes of this Section, the Principal Judge of the Ahmedabad City Civil Court shall be deemed to be the District Judge of the district, and the City of Ahmedabad shall be deemed to be a district."

**7.1.** Section 5 of the Limitation Act provides for extension of prescribed period in certain cases where any appeal or application, other than an application under any of the provisions of Order 21 of the Code, may be admitted after prescribed period, if the appellant/applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such prescribed period. That applicability of Sec. 5 of the Limitation Act is to be considered in the context of provisions in the statute governing subject-matter of appeal. The prescribed period is defined under Sec. 4 of the Limitation Act. Section 14 of the Limitation Act, is about exclusion of time or proceedings *bona fide* in Court *without jurisdiction* and sub-sec. (1) specifically provides for computing period of limitation for any suit and the time during which a person is prosecuting with due diligence any civil proceedings before the Court initially or any appeal or revision as the case may be against other party shall have to be excluded provided such proceeding relates to the same matter in issue and is *prosecuted in good faith* in a Court, which from *defect of jurisdiction* or *other cause of a like nature*, is unable to entertain such proceedings. Such time taken for prosecuting proceedings, as above in sub-sec. (1) is to be excluded from applicability of limitation *viz.* computing the period of limitation of application. The G.P.P. Act provides for eviction of unauthorised occupant from public premises and for certain exceptional matters empowers the competent authority to issue notice to show-cause against the order of eviction under Sec. 4 and after affording a reasonable opportunity of hearing and considering reply pursuant to the notice to pass the order of eviction of unauthorised occupants under Sec. 5 as referred to therein and if a person aggrieved of the order passed under Sec. 5 of the G.P.P. Act, appeal under Sec. 9 of the G.P.P. Act lies from every order of the competent officer made in respect of any public premise before the appellate authority so designated *viz.,* the learned District Judge and such appeal under Sec. 5 is to be preferred within 15 days from the date of service of the order under sub-sec. (1) of Sec. 9 and proviso carved out in sub-sec. (2) of Sec. 9 provides that the appellate officer has power to entertain the appeal after expiry of such period of 15 days and being satisfied that the appellant was prevented by sufficient cause from filing appeal in time. Thus, Secs. 5 and 14 of the Limitation Act operate under different situations and circumstances and applicability thereof to application for condonation of delay are the proceedings undertaken by an aggrieved person or party challenging the order impugned. In the case on hand, the order passed by the competent officer under Sec. 5 of the G.P.P. Act and appeal is to be filed within 15 days

of service of the order under Sec. 5 and contentions are raised that no such order was ever served upon the petitioners–applicants along with observations made by the Division Bench of this Court in *Letters Patent Appeal No. 148 of 1996.*

**7.2.** Certain factual aspects about allotment of the subject land to the petitioners and rescinding of contract and cancellation of allotment, issuance of show-cause notice and order passed under G.P.P. Act are not in dispute except that of service of such notices and orders, it is necessary to refer to prayers to writ petition being Special Civil Application No. 11645 of 1994 by the petitioner, which read as under :

"(A) This Hon'ble Court may be pleased to declared that :

(i) the respondent Nos. 1, 2 and 3 have no authority whatsoever, to hand over the possession of the land admeasuring 1,61,000 sq.mtrs., of Survey Nos. 148 and 148P at Village More, Taluka Choryasi, District Surat, allotted to the petitioners on 4-3-1986, to the respondent No. 4 and their action to hand over the said land to the respondent No. 4 is apparently illegal, arbitrary, *mala fide* and collusive, and hence, violative of Art. 14 of the Constitution of India, and

(ii) the respondent No. 4 has no authority to retain the land mentioned in (i) above and is liable to hand over the possession of the said land to the petitioners in the same conditions in which the respondent No. 4 has got the same in a collusive manner from the respondent Nos. 1, 2 and 3.

(B) This Hon'ble Court may be pleased to issue appropriate writs, orders and/or directions against —

(i) the respondent Nos. 1, 2 and 3 to hand over the possession of the land admeasuring 1,61,000 sq.mtrs. of Survey Nos. 148 and 148P at Village More, Taluka Choryasi, District Surat, allotted to the petitioners on 4-3-1986, in the same conditions in which it was allotted to the petitioners by order Annexure 'A' to the respondent No. 2, and

(ii) the respondent No. 4 permanently restraining it or its agents and/or assigns from obstructing the peaceful possession of the said land by the petitioners and vacate the same forthwith so as to make it suitable for the respondent Nos. 1, 2 and 3, to facilitate the possession of the said land to the petitioners in the same conditions in which it was allotted to them by the order Annexure 'A' dated 4-3-1986.

*Alternatively*

This Hon'ble Court may be pleased to issue appropriate writs, orders and/or directions, directing the respondents to refund to the

petitioners to amount of Rs. 12,45,000/- in addition to the preliminary expenses incurred by the petitioners, with exemplary damages.

(C) Pending the hearing and final disposal of this writ petition, an interim order be issued against the respondent Nos. 1, 2, 3 and 4 to maintain the *status quo* in respect of the said land.

(D) Costs of this petition may be provided for."

**7.3.** In the above writ petition, a specific prayer is made to direct the respondent No. 4 to evict the plot under reference forthwith so as to facilitate respondent Nos. 1 to 3 to restore the possession on the same basis on which it was allotted to the petitioners under letter of allotment dated 4-3-1986, and alternatively, it was prayed for a direction to be given to respondent–G.I.D.C. to refund the amount of Rs. 12,45,000/- and other expenses incurred by the petitioners. *It was further the case of the petitioners that no action was taken under the provisions of the G.I.D.C. Act, 1962 and action taken under G.P.P. Act for which the petitioner had no knowledge whether the service was effected since learned Single Judge negated the above contentions of service of notices and orders under G.I.D.C. Act and under G.P.P. Act. Further, the findings* of learned Single Judge of service of notice and orders, as above were not approved by the Division Bench and since the matter involved disputed questions of facts, which could not have been decided in discretionary jurisdiction under Art. 226 of the Constitution of India, the Letters Patent Appeal was dismissed as well as order passed by learned Single Judge came to be confirmed. Since, heavy reliance is placed on observations made by the Division Bench in Paras 7, 8 and 9 of the judgment *dated 3-5-1996* rendered in *Letters Patent Appeal No. 148 of 1996*, for the sake of convenience Paras 7, 8 and 9 of the said judgment are reproduced hereunder :

"7. Admittedly, the petitioners have come before the Court for getting relief under Art. 226 of the Constitution of India. It is the contention of the respondents that respondent No. 1 had issued notice on 20-5-1993 to the petitioners for the petitioners' failure to make use of the land for the purpose for which it was allotted, and consequently, passed an order dated 29-6-1993 by rescinding the said allotment and ordering resumption of the allotment. It is the case of the petitioners that both the notices as well as the orders dated 20-5-1993 and 29-6-1993 were not at all served on them and they had not received the same. Similarly, it was also contended by the petitioners before the learned Single Judge that they had not received any notice of the proceedings taken against them under the said Act and as they were not served with the notice, they could not appear in the said proceedings. They further contended that they came to know of such proceedings taken under the said Act for the first time when they received a copy of the reply-affidavit filed by respondent No. 1. It was further

contended by the petitioners that though the petitioners had issued a letter on 5-4-1994 and notice through Advocate thereafter and before the filing of the present petition, they had not received any reply from the respondent No. 1. *Now, in view of these facts it is quite obvious that there were complicated questions of facts before the learned Single Judge. It is settled law that complicated questions of facts are not to be considered and decided by a Court exercising jurisdiction under Art. 226 of the Constitution of India. With due respect to the learned Single Judge, it must be said that though this is the settled legal position, the learned Judge went into the question on the strength of the document produced before him and on the basis of the pleadings of the parties and he has recorded finding on the disputed fact. In view of the settled principle of law, he ought to have avoided the same. When there were complicated questions of facts it was proper on his part to refuse to exercise the jurisdiction under Art. 226 of the Constitution of India and to direct the parties to go for appropriate Court of law for getting decision on the controversy between the them. Therefore, in our opinion, such findings of fact regarding service of the letters issued by the respondent No. 1 for rescinding allotment as well as regarding proceedings under the said Act will have to be set aside. In our view, finding on complicated question of fact ought not to have been recorded by exercising jurisdiction under Art. 226 of the Constitution of India. It would be open for both the parties to agitate the question regarding service or non-service of the said notices as well as the proceedings before the appropriate Court. We want to make it clear that the finding recorded by the learned Single Judge regarding the proper and valid service of the notice would not be binding on the said Court and the Court will be at liberty to come to its own conclusion.* At the cost of repetition, it must be said that it would be open for the parties to raise the contention regarding the said notice as well as the proceedings under the said Act before the appropriate forum.

8. The learned Counsel for the appellants has vehemently argued before us that the appellants-petitioners came to know about the rescinding of the allotment as well as the proceedings under the said Act for the first time after the respondent No. 1 filed reply-affidavit. Then, she further contented that in view of this fact and the fact that these proceedings *viz.,* proceedings under Art. 226 of the Constitution taken by the appellants in this Court, if he happen to go before the appellate authority by preferring an appeal, it is clear that such appeal would be barred by delay. *Therefore, in these circumstances, this Court should observe that the delay in preferring the said appeal should be condoned. We appreciate her anxiety as well as her submission. But we feel that it is the discretion and jurisdiction of the appellate authority to consider and decide the question of condoning the delay. We do not wish to transgress on that discretionary jurisdiction. The appellants would be at liberty to urge all the submissions made before us and even can urge additional submission before the appellate authority in order to convince that there is reasonable ground for condoning the delay in preferring the appeal before him. In our opinion, it is for the appellate authority to*

*consider all the circumstances that may be brought before him and this Court cannot direct or order the appellate authority that the appellate authority should decide the question of condoning the delay in a particular manner.*

9. The questions which are involved in this case are complicated questions of fact and they could not be decided in a proceedings under Art. 226 of the Constitution of India. *The proper remedy for the appellants is to go before the appropriate authority either by way of preferring an appeal under Sec. 9 of the said Act or to go before the Civil Court to get a declaration as regards the order of eviction passed under the said Act or simultaneously to have both the proceedings as per the advice the appellants may get. But we are unable to accept the contention of the appellants-petitioners that this Court should exercise the discretionary powers under Art. 226 of the Constitution and to decide the questions raised by the petitioners-appellants regarding the alleged illegal eviction of the petitioners from the land in question and the petitioners' claim for getting back the possession of the said land.* ***Therefore, in the circumstances, we hold that the conclusion arrived at by the learned Single Judge of rejecting the writ is quite legal and proper and we are confirming the same on the particular ground that the matter involves complicated questions of facts which could not be decided in the discretionary jurisdiction under Art. 226 of the Constitution of India. In the result, the order passed by the learned Single Judge is confirmed and the L.P.A. stands disposed of accordingly with no order as to costs.***"

(Emphasis supplied)

**7.4.** Thus, reading of Paragraphs 7, 8 and 9 of the judgment, it is clear that the findings on disputed and complicated questions of facts about service or non-service of notices and orders under the G.I.D.C. Act and G.P.P. Act were considered to be not permissible in exercise of discretionary jurisdiction under Art. 226 of the Constitution of India. Further, it was kept open for the parties to agitate the above questions regarding service or non-service of the said notices as well as orders before the appropriate Court making it clear that findings recorded by the learned Singe Judge regarding proper and valid service of the notices etc. would not be binding on the said Court and the Court will be at liberty to draw its own conclusions. It was also kept open for the parties respectively to raise their contentions in this regard. However, on the specific request made by learned Counsel for the appellants to observe about delay in preferring the appeal under Sec. 9 of the G.P.P. Act to be condoned, was not accepted and held that it was the discretion and jurisdiction of the appellate authority to consider and decide the question of condoning delay as the appellate Bench was not inclined to transgress on the discretionary jurisdiction and it was left to the appellate authority to consider all the circumstances that may be brought before the authority in accordance with law. At the same time, it is true that the Division Bench opined that the order passed by the learned Single Judge rejecting

the writ petition is quite legal and proper and confirmed the same on the particular ground that the matter involves complicated questions of facts which could not be decided in the discretionary jurisdiction under Art. 226 of the Constitution of India. However, the resultant effect was that the order of learned Single Judge rejecting the petition was confirmed and Letters Patent Appeal came to be disposed of accordingly. A conjoint reading of above Paragraphs would reveal that the Division Bench had confirmed the order of learned Single Judge keeping it open to the appellants to urge all submissions made before the Bench as well as the additional submissions before the appellate authority in order to convince that there was sufficient ground for condoning the delay in preferring the appeal and the appellate authority to consider all the circumstances so brought before the authority by refusing to direct or order the appellate authority to decide the question of condoning the delay in a particular manner.

**7.5.** Thus, the appellate authority was free and at liberty to decide and consider application for condonation of delay in appeal preferred under Sec. 9 of the G.P.P. Act independently without being influenced by findings of the learned Single Judge in writ petition about service or non-service of notices and orders passed under G.I.D.C. Act and G.P.P. Act.

**7.6.** Following decisions relied on by learned Counsels for the parties in support of their contentions :

Decisions relied on by the petitioners to construe Secs. 5 and 14 of the Limitation Act liberally so as not to defeat the cause and the case on merit rendering the petitioners remediless :

(1) *Shakti Tubes Ltd. Through Director v. State of Bihar,* 2009 (1) SCC 786.

(2) *Rameshwarlal v. Municipal Council, Tonk,* 1996 (6) SCC 100.

(3) *Laxmidas Morarji (Dead) by L.Rs. v. Miss Behrose Darab Madan,* MANU/SC/1675/2009 : [2010 (1) GLR 825 (SC)]

(4) *HBM Print Ltd. v. Scantrans India Pvt. Ltd.,* MANU/SC/7259/2007 : [2009 (17) SCC 338]

(5) *P. Sarathy v. State Bank of India*, 2000 (5) SCC 355.

(6) *Karim Abdulla v. Heirs of Deceased Bai Hoorbai Jama,* 1975 (16) GLR 835 wherein the principles laid down were reaffirmed by the Apex Court in the decision of Apex Court in the *Collector, Land Acquisition v. Katiji,* AIR 1987 SC 1353.

(7) *Bhikhabhai Mavjibhai Patel v. State of Gujarat,* 1994 (1) GLR 151

(8) *Maganbhai Govanbhai Patel v. State of Gujarat,* 2009 (1) GLR 82

*Decisions relied on by the respondent No. 4 :*

(1) *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai,* 2012 (5) SCC 157 : [2012 (3) GLR 2299 (SC)]

Wherein the consideration of prejudice to the other side will has been held to be a relevant factor and the Courts is not to be 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.

(2) *Lanka Venkateswarlu (Dead) by L.Rs. v. State of Andhra Pradesh,* 2011 (4) SCC 363

As to the explanation to justify delay as well as negligence on the part and that liberal approach in considering sufficient cause for delay should not overrule substantial law of limitation when Court finds no justification for delay.

(3) *Vedabai @ Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil,* 2001 (9) SCC 106

Laying down the principles of advancing substantial justice, which is of a prime importance while construing the expression 'sufficient cause'.

(4) *Ketan V. Parekh v. Special Director, Directorate of Enforcement,* AIR 2012 SCC 683

Wherein besides statutory remedy available under the Act, writ petition was preferred before the High Court of Delhi and later on presented before High Court of Bombay and contention was raised for exclusion of time taken while pursuing remedy *bona fide* before the Delhi High Court and delay caused therein to be condoned was not accepted by the Apex Court.

**7.7.** That with regard to the proposition of law laid down by the Apex Court in the above cases, this Court is in agreement, but at this juncture, it is necessary to refer to two decisions of the Apex Court in the cases of (i) *Maniben Devraj Shah,* (2012 (5) SCC 157) in which the Apex Court considered the decision of *Collector, Land Acquisition* (supra) and *State of Nagaland v. Lipok A.O.,* reported in 2005 (3) SCC 752 and other decisions including *Vedabai,* (2001 (9) SCC 106) and in Paras 23 and 24 held as under :

"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 Sec. 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."

**7.8.** Even prior to that in the case of *Balwant Singh (Dead) v. Jagdish Singh,* 2010 (8) SCC 685 in the context of Order 22, Rules 9(2) and (3) of the Code of Civil Procedure, sufficient cause, as contained in Sec. 5 of the Limitation Act was considered in light of earlier decisions and held that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of the reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. 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 the party. Justice must be done to both the parties equally. Then alone 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 its acting vigilantly. Besides, the Apex Court further held that the explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. The Apex Court also considered earlier decision of *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) By L.Rs.,* 2008 (8) SCC 321 in which the difference of consideration of application for condonation of delay under Sec. 5 of the Limitation Act is noticed, where application is preferred for condoning delay in pending proceedings and in filing appeal and/or revision.

**7.9.** According to the Apex Court all the above factors are to be kept in mind while considering sufficient cause for exercising discretion under

Sec. 5 of the Limitation Act, including *bona fide* of the applicant based on true and plausible explanation.

**7.10.** In the context of Sec. 14 of the Limitation Act, at this stage, it is necessary to refer to decision of the Apex Court in the case of *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department,* 2008 (7) SCC 169, which is referred to and relied on subsequently by the Apex Court in other decisions so referred by learned Counsels for the parties. In the above case, in the context of proviso to Sec. 34(3) and Sec. 43(1) of Limitation Act for setting aside arbitration award and applicability of Sec. 14 of the Limitation Act while considering period of limitation prescribed in Sec. 34(3), it was held that applicability of Sec. 14 of the Act is not excluded particularly when application under Sec. 34(3) is pursued in a Court without jurisdiction, and therefore, the benefit of Sec. 14 of the Act for exclusion of time is available. However, in the above decision, authored by His Lordship Hon'ble Mr. Justice J. M. Panchal (as His Lordship then was), was concurred by Hon'ble Mr. Justice R. V. Raveendran (as His Lordship then was) with the fine and fundamental distinction between the discretion to exercise powers under Sec. 5 of the Limitation Act and exclusion of time provided in Sec. 14 of the said Act is made out. In Paras 21, 22, 28 and 31 of the said judgment, their Lordships held as under :

> "Para 21. Section 14 of the Limitation Act deals with exclusion of time of proceeding *bona fide* in a Court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Sec. 14 can be pressed into service :
>
> (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
>
> (2) The prior proceeding had been prosecuted with due diligence and in good faith;
>
> (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
>
> (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
>
> (5) Both the proceedings are in a Court.
>
> Para 22. The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Sec. 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Sec. 14. In fact, the Section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum.

On reading Sec. 14 of the Act it becomes clear that the Legislature has enacted the said Section to exempt a certain period covered by a *bona fide* litigious activity. Upon the words used in the Section, it is not possible to sustain the interpretation that the principle underlying the said Section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the Court is unable to give him such a trial, would not be applicable to an application filed under Sec. 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the Court, that is, a Court having no jurisdiction to entertain it, but also where he brings the suit or the application in the wrong Court in consequence of *bona fide* mistake or law or defect of procedure. Having regard to the intention of the Legislature this Court is of the firm opinion that the equity underlying Sec. 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong Court, should be excluded.

Para 28. Further, there is fundamental distinction between the discretion to be exercised under Sec. 5 of the Limitation Act and exclusion of the time provided in Sec. 14 of the said Act. The power to excuse delay and grant an extension of time under Sec. 5 is discretionary whereas under Sec. 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep, than Sec. 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Secs. 5 and 14 are different. The effect of Sec. 14 is that in order to ascertain what is the date of expiration of the "prescribed period", the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in *Popular Construction Company* (supra) rules that the provisions of Sec. 14 of the Limitation Act would not apply to an application challenging an award under Sec. 34 of the Act.

Para 31. To attract the provisions of Sec. 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist. There is no manner of doubt that the Section deserves to be construed liberally. Due diligence and caution are essentially pre-requisites for attracting Sec. 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a Court holds up a case while it is discovering that it ought to have been presented in another Court, must be excluded, as the delay of the Court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Sec. 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Sec.

14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard and fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong Court would not *prima facie* show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other Courts with due diligence and in good faith."

**7.11.** Therefore, ordinarily the petitioners-appellants were to prefer appeal under Sec. 9 of the G.P.P. Act against order dated 18-8-1993 passed by respondent-G.I.D.C. in exercise of powers under Sec. 5 of the G.P.P. Act within 15 days of service of such order. However, the petitioners preferred Special Civil Application No. 11645 of 1994 on 23-9-1994, which came to be finally disposed of on 14-12-1995. So, if the record of the above writ petition is seen along with Application No. 58 of 1996 for condonation of delay filed by the petitioners before the appellate authority, it was averred in Paras 17 and 20 of the application for condonation of delay that the petitioners came to know with regard to revocation of allotment *vide* notices dated 20-5-1993 and 27-6-1993, and further notice dated 27-7-1993 of eviction issued under Sec. 4 of the G.P.P. Act and order dated 18-8-1993 rescinding the allotment of land passed under Sec. 5 of the G.P.P. Act only when affidavit-in-reply was filed by G.I.D.C. in writ petition on 14-11-1994. However, the writ petition was finally decided on 14-12-1995. The petitioners thought it just and proper to prefer appeal as certain findings of facts about service or non-service of notices and orders had gone against them, and therefore, the petitioners preferred Letters Patent Appeal, which came to be finally disposed of on 3-5-1996 by confirming the order passed by learned Single Judge. If the above conduct of the petitioners of filing writ petition on the basis of advice and assistance of competent and well experienced Advocates is seen in the context of plea of exclusion of period of prosecuting remedy of writ petition in High Court in good faith and due diligence, such plea is to be considered with grounds mentioned in the application for condonation of delay and prayer made therein. Paragraphs 20 and 21 refer to availing remedy of writ petition and Letters Patent Appeal and that Division Bench in Letters Patent Appeal according to petitioners, directed the petitioners to avail the statutory remedy available under the G.P.P. Act as well as any other civil remedy available to the petitioners, which is half truth and no direction was given but according to Division Bench, proper remedy was to go before appellate authority by filing appeal under Sec. 9 of the G.P.P. Act. That prayer to direct the appellate authority to condone the delay was not accepted giving liberty to deal application for delay on its own merit.

**7.12.** That prior to filing of writ petition, as stated earlier, notices were issued by the Advocate on behalf of the petitioners clearly mention address of the petitioners at New Delhi, so is the case in the cause-title and from the prayer made in the writ petition *viz.,* for directing the respondents to hand over possession to the petitioners, it is clear that the petitioners were not in the possession of the subject land and at least aware about handing over possession of subject land to respondent No. 4. Further, the relief claimed in addition to hand over the possession of the land in question or in the alternative to pay refund to the petitioners an amount of Rs. 12,45,000/- and other expenses and exemplary damages, the fact about taking over possession by the respondent-authorities by issuing notices and order passed by G.I.D.C. as well as under the G.P.P. Act was brought to the notice of the petitioners in the reply. Thus, at that point of time, the petitioners had knowledge about action taken by the respondent-authorities, but still preferred to file petition seeking possession and other reliefs. It may be true that the above petition came to be rejected and findings have gone against the petitioners and was entitled to challenge by way of Letters Patent Appeal, but nowhere in the above order of Division Bench, any direction was given to the petitioners as contended before the trial Court in the application for condonation of delay that he should undertake the remedy of appeal. On the contrary, Division Bench in no uncertain terms refused to issue any such direction to the Court below to condone delay and the Court was at liberty to draw its own conclusions on the merit of the case. The grounds sought to be canvassed by the petitioners for condoning the delay would not support the plea of the petitioners that the petitioners had taken or pursued remedy in good faith and with due diligence. Nowhere in the application for condonation of delay any specific pleading/averment/contention was raised about exclusion of time under Sec. 14 of the Limitation Act and in absence of specific plea, the concerned Court was not supposed to deal with such contention based on applicability of Sec. 14 of the Act. The trial Court, therefore, while considering application under Sec. 5 of the Limitation Act, noticed about pursuing the remedy before the Court though the petitioners-applicants were aware about passing of the orders when the matter was pending in the High Court. Had the petitioners been vigilant while pursing the remedy of appeal against the findings of fact recorded by learned Single Judge, a remedy of appeal under Sec. 9 of the G.P.P. Act could have been taken simultaneously. Thus, while the issuance of notices before filing the writ petition, during the course of writ petition and pendency of Letters Patent Appeal and thereafter also, there is a delay which according to this Court resulted into passing the order by the trial Court. If the order of trial Court is perused, it has extensively considered the conduct of the petitioners and grounds supplied in support of delay and statutory limit provided for filing

appeal under Sec. 9(2)(a) *i.e.* within 15 days from the knowledge of the notice *i.e.* on 14-11-1994, which was according to the Court expired on or before 28-11-1994, and therefore, there was inordinate delay. In the facts and circumstances of the case and in absence of specific pleading for exclusion of time under Sec. 14 of the Limitation Act, petitioners were not entitled to get the benefit, and therefore, order passed by the trial Court is in accordance with the settled parameters of law laid down by the Apex Court in the cases of *Consolidated Engineering Enterprises,* (2008 (7) SCC 169), *Lanka Venkateswarlu (Dead) By L.Rs.,* (2011 (4) SCC 363), *Vedabai @ Vaijayanatabai Baburao Patil,* (2001 (9) SCC 106) and *Ketan V. Parekh,* (AIR 2012 SCC 683). Even on the ground of equity also the order of the trial Court does not require any interference.

**7.13.** Thus, in short, as discussed hereinabove, following conclusions are drawn while not accepting submissions made by learned Counsel for the petitioners.

**7.14.** That application for condonation of delay was basically, essentially and substantially under Sec. 5 of the Limitation Act and no specific pleadings were made seeking benefit of Sec. 14 of the Limitation Act. Even none of ingredients laid down by the Apex Court in Para 21 of the decision in the case of *Consolidated Engineering Enterprises,* (2008 (7) SCC 169) is available to the petitioners in the facts and circumstances of the case.

**7.15.** The petitioners were pursuing remedy of writ before the Court having jurisdiction and learned Single Judge has rejected the writ petition and the said order was confirmed specifically in Letters Patent Appeal barring certain observations about exercise undertaken by the learned Single Judge *qua* disputed and complicated facts of service or non-service of notices and orders. The Division Bench has not set aside the order of the learned Single Judge and no direction was given to file an application or a specific remedy to be undertaken, as contended by learned Advocate before the trial Court as well as this Court. On the contrary, the request of the petitioners to direct the Court below to condone the delay, was specifically rejected and granted liberty to deal with the contentions on merits. The petitioners were aware about orders passed under G.P.P. Act as per the affidavit-in-reply filed in earlier writ proceedings on 14-11-1994, and therefore, within 15 days *i.e.* on or before 28-11-1994 petitioners ought to have filed appeal under Sec. 9 of the G.P.P. Act and to that extent the order impugned by the trial Court cannot be said to be illegal.

**7.16.** Knowledge and awareness of dispossession galores from the earlier writ petition, more particularly, the prayer made by the petitioners, which are reproduced in earlier Paragraphs along with other averments. In spite

of the above, no prompt action was taken to pursue the remedy by the petitioners.

**7.17.** Besides, no mistaken remedy or selecting a wrong forum in taking recourse of the earlier writ proceedings can be discerned from the averments in the application for condonation of delay. A conscious decision was taken to move High Court on the basis of the expert legal advice of the competent lawyers and there was delay in filing application for condonation of delay and grounds for absence of lawyer due to vacation were irrelevant. No prompt action is taken even after rejection of writ petition by learned Single Judge, and thereafter, also caused delay in getting certified copy of the order of Letters Patent Appeal.

**7.18.** In the above backdrop of conclusions when Sec. 5 is discretionary and to arrive at a satisfaction that whether sufficient cause was shown or not, the Court has to consider facts and circumstances so applied in the application for condonation of delay as held in the case of *Maniben Devraj Shah,* [2012 (5) SCC 157] and when no specific pleadings were made for exclusion of time under Sec. 14 of the Limitation Act, the Court may also look into good faith and due diligence that earlier proceedings were initiated or not. The liberal approach that is to be taken in view of the decision of the Apex Court while exercising discretion under Sec. 5 of the Limitation Act is not available to the petitioners, who have taken recourse to filing writ petition in which they failed. Equity had changed substantially and against expenditure incurred by the petitioners so submitted by the learned Advocate for the petitioner of Rs. 15 crores, respondent No. 4 has invested about Rs. 22,000 crores towards infrastructural facilities and installation of plant and machinery, as stated in the affidavit-in-reply on oath, which remained undisputed. Besides, the petitioners are not rendered remediless since they have pursued the remedy of filing Civil Suit against the action of G.I.D.C.

**8.** In the result, in absence of any illegality, the impugned order dated 8-5-2009 passed by the learned 6th Additional District and Sessions Judge, Surat does not call for any interference by this Court in exercise of powers under Arts. 226 and 227 of the Constitution of India.

In view of the above discussion, this petition fails and is hereby dismissed.

Rule is discharged.

*(HSS)* *Petition dismissed.*

* * *