PETITIONER:
N. BALAKRISHNAN.

Vs.

RESPONDENT:
M. KRISHNAMURTHY.

DATE OF JUDGMENT: 03/09/1998

BENCH:
S.SAGHIR AHMAD, K.T. THOMAS.,

ACT:

HEADNOTE:

JUDGMENT:
JUDGEMENT
Thomas J.
Leave granted.
Explanation for the apparently inordinate delay in moving an application was accepted by the trial court under Section 5 of the Limitation Act, 1963, but the High Court in revision reversed the finding and consequently dismissed the motion. That order of the High Court has given rise to these appeals.
Facts barely needed for these appeals are the following:
A suit for declaration of title and ancillary reliefs filed by the respondent was decreed ex-parte on 28.10.1991. Appellant, who was defendant in the suit, on coming to know of the decree moved an application to set it aside. But the application was dismissed for default on 17.02.1993. Appellant moved for having that order set aside only on August 19, 1995 for which a delay of 883 days was noted. Appellant also filed another application to condone the delay by offering an explanation which can be summarized thus:
Appellant engaged an advocate (one Sri MS Rajith) for making the motion to set the ex-parte decree aside but the advocate failed to inform him that the application was dismissed for default on 17.2.1993. When he got summons from the execution side on 5.7.1995 hye approached his advocate but he was told that perhaps execution proceedings would have been taken by the decree holder since there was no stay against such execution proceedings. On the advice of the same advocate, he signed some papers including a Vakalatnama for resisting the execution proceedings, besides making a payment of Rupees Two Thousand towards advocate's fees and other incidental expenses. But the fact is that the said advocate did not do anything in the court even thereafter - On 4.8.1995 the execution warrant was issued by the court and he became suspicious of the conduct of his advocate and hence rushed to the court from where he got the disquieting information that his application to set aside the ex-parte decry stood dismissed for default as early as 17.2.1993 and that nothing was done in the court thereafter

on his behalf. He also learned that his advocate has left the profession and joined as legal assistant of MS Maxworth Orcheads India Limited. Hence he filed the present application for having the order dated 7.2.1993 set aside.

Appellant did not stop with filing the aforesaid application. He also moved the District Consumer Disputes Riderless Forum, Madras North ventilating his grievance and claiming a compensation of rupees on lakh as against his erstwhile advocate. The said forum passed final order directing the said advocate to pay a compensation of Rs. Fifty thousand to the appellant besides a cost of Rs. Five Hundred.

Though, the trial court was pleased to accept the aforesaid explanation and condoned the delay a single Judge of the High Court of Madras who heard the revision, expressed the view that the delay of 883 days in filing the application has not been properly explained. Hence the revision was allowed and trial court order was set aside. An application for review was made, but that was dismissed. Hence these appeals.

The reasoning of the learned single Judge of the High Court for reaching the above conclusion is that the affidavit filed by the appellant was silent as to why he did not meet his advocate for such a long period. According to the learned single Judge:

> "If the appellant was careful enough to verify about the stage of the proceedings at any point of time and had he been misled by the counsel then oily it could have been said that due to the conduct of the counsel the party should not be penalised."

Learned single judge then observed that when the party is in utter negligence, he cannot be permitted to blame the counsel. Learned single judge has further remarked that:

> "A perusal of the affidavit does not reveal any diligence on the part of the respondent in the conduct of the proceedings. When already the suit has been decreed ex-parte, the respondent ought to have been more careful and diligent in prosecuting the matter further. the conduct of the respondent clearly reveals that at any point of time, he has not relished his responsibility as a litigant."

Appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not

disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the dela. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court.

The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the

respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Riderless Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date.

The appeals are disposed of accordingly.