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and the respondent has been deprived thereof during the pendency of the court proceeding. If the parties would have performed agreement to sell without the intervention of the court, the respondent herein would have received the said sum much earlier in point of time and in any case fault cannot be attributable to him after the year 1996 when he succeeded in the learned trial court. It is a settled principle of law that no party should suffer on account of proceedings pending before the court. I have awarded the above rate of interest for balancing the equities between the parties and more particularly that the respondent herein had succeeded before the learned courts below.

(20) This appeal is, accordingly, allowed in the above terms. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

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**R.N.R.**

*Before M.L. Singhal, J*

THE STATE OF HARYANA & OTHERS,—*Petitioners*

*versus*

WAZIR CHAND,—*Respondent*

*C.R. No. 5640 of 1999*

10th August, 2000

*Limitation Act, 1963—S. 5—Delay in filing the appeal by the State Government—1st Appellate Court declining application for condonation of delay—Whether the appellate court has jurisdiction to go into merits of the appeal after having dismissed application u/s 5—Held, no.*

Held, that the state is like any other litigant. If the State is like any other litigant, state cannot be given preferential treatment. Every litigant whether it be State or an individual deserves the same treatment. For determining whether there is sufficient cause in filing the appeal beyond limitation, the same yardstick should not apply to the State which yardstick is applied to the case of any other individual as when appeal is to be filed by the state, the decision to file the appeal is not taken by an individual at his own level. Decision to file an appeal is taken after the matter passes through several hands. When the matter passes through several hands, we cannot lose sight of the fact that some delay may take place at the level of one or the other official.

(Para 3)

Further held, that if delay is not condoned in filing the appeal, a good cause on merits may get defeated and injustice may get perpetuated by delayed filing of the appeal. There was no gain to the State by the delayed filing of the appeal. Merits of the appeal would not have improved, merits of the appeal would remain as they were, if the appeal had been filed in time.

(Para 4)

S.S. Mattewal, Additional AG Haryana *for the petitioner.*

None *for the respondent.*

### JEDGMENT

*M.L. Singhal, J (oral)*

(1) *Vide* order dated 31st July, 1999, Additional District Judge, Hisar refused to condone delay in filing the appeal by the State of Haryana and dismissed their application under section 5 of the Limitation Act for condonation of delay. *Vide* another order of the same day, he went into the merits of the appeal and dismissed it on merits. State of Haryana has come up in revision to this Court against the refusal to undone delay and the dismissal of appeal on merits by the Additional District Judge, Hissar.

(2) Learned Additional Advocate General, Haryana submits that when Additional District Judge, Hisar had dismissed the application of the State of Haryana filed under section 5 of the Limitation Act for condoning delay, Additional District Judge became *functus officio* and he could not have touched merits of the appeal at all. He submits that dismissal of the appeal by Additional District Judge on merits is without jurisdiction and is non-est. I think, the submission made by learned Additional AG Haryana is correct. After the Additional District Judge had refused to condone delay, all that he could have done was to say that in consequence of the prayer of the state of Haryana for condoning delay having been declined, the appeal is dismissed.

(3) Appeal was filed by the State of Haryana after delay of 27 days. In support of the prayer for condoning delay, State of Haryana has alleged that Legal Remembrancer, Haryana,—*vide* order dated 30th December, 1998 had instructed District Attorney to file appeal and the District Attorney had,—*vide* order dated 12th January, 1999 asked the Divisional Forest Officer, Hisar to send certified copy of the judgment and decree. Appeal was filed on 25th January, 1999 and 13 days time was taken after 12th January, 1999. Learned Additional AG Haryana submits that some time is taken in sending the case

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through various functionaries of the State and, therefore, delay in filing the appeal is caused. He submits that the decision that appeal be filed is not to be taken by an individual. It is taken after the matter passes through several hands. If decision to file appeal is to be taken by an individual, there can be no delay but if the decision to file the appeal is taken after the matter passes through several hands, some delay is likely to take place and that delay should be condoned and if that delay is not condoned, public interest will suffer. It was held in *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others*, (1) that "the doctrine of equality before law demands that all litigants including the State as litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact on account of an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on part of the State is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. So also the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles a decision on merits." It is true that the State is like any other litigant. If the State is like any other litigant, State cannot be given preferential treatment. Every litigant whether it be State or an individual deserves the same treatment. For determining whether there is sufficient cause in filing the appeal beyond limitation, the same yardstick should not apply to the State which yardstick is applied to the case of any other individual as when appeal is to be filed by the State, the decision to file the appeal is not taken by an individual at his own level. Decision to file an appeal is taken after the matter passes through several hands. When the matter passes through several hands, we cannot lose sight of the fact that some delay may take place at the level of one or the other official. It was held in *Punjab State and another vs. Kultar Chand* (2), that "the State has to act through various functionaries. Till the Legal Remembrancer grants the permission to the concerned department of the State to file appeal against a particular order/judgment, the department cannot of their own file the appeal. In the instant case, the delay was occasioned because the Legal Remembrancer took sufficient time to give opinion in the matter and grant sanction to the concerned department to file the appeal. No negligence can be attributed to the petitioners. Refusal to condone delay has resulted in

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(1) AIR 1987 SC 1353

(2) 1991 S.C.T. 28

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mis-carriage of justice because the lis inter parties will not be adjudicated upon on merits but in fact will go in default merely because the petitioners did not file the appeal within time.”

(4) If delay is not condoned in filing the appeal, a good cause on merits may get defeated and injustice may get perpetuated by delayed filing of the appeal. There was no gain to the State by the delayed filing of the appeal. Merits of the appeal would not have improved merits of the appeal would remain as they were, if the appeal had been filed in time.

(5) For the reasons given above, this revision is allowed. Delay in filing the appeal is condoned. Dismissal of the appeal on merits by Additional District Judge, Hisar is also set aside. District Judge, Hisar is directed to hear this appeal himself on merit or arrange the hearing of this appeal by another Additional District Judge posted with him at Hisar for decision on merits.

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**R.N.R.**

*Before M.L. Singhal, J*

NIKHIL SHARMA,—*Petitioner*

*versus*

A.N. BHARDWAJ & ANOTHER,—*Respondents*

*C.M. No. 5660—CII of 1999*

11th October, 2000

*Code of Civil Procedure, 1908—Ss. 24 & 151—Suit for recovery of damages by a fairly Senior Advocate practising at Ludhiana—Defendants outsiders—Defendants apprehending that because of the local influence wielded by the plaintiff at the Bar the defendants will be at disadvantage at the trial of the suit and the Court may lean in his favour—Whether sufficient ground to transfer the case from one Court to another—Held, yes, on the totality of facts—Justice should not only be done but it should seem to have been done.*

*Held, that a Senior Advocate practising at Ludhiana and his son are plaintiffs in a suit for recovery. Defendants are out-siders. No wonder, they are put at disadvantage vis-a-vis the plaintiffs so far as the fair trial of the suit at Ludhiana is concerned. Justice should not only be done but it should seem to have been done. There will be no harm to the plaintiffs if the case is transferred from Ludhiana Court to some other Court at Chandigarh in the hope that trial of the case shall be more just and fair at Chandigarh, because at Chandigarh,*