held that section 31 was the only provision relating to hearing and disposal of the appeal and if an order dismissing the appeal as barred by limitation be one passed in appeal, it must fall within section 31. On the same process of reasoning it appears to me that the order of the Appellate Assistant Commissioner dismissing the appeal as incompetent would be an order passed under section 31. As a matter of fact, the order is itself described as one under section 31. That being so, the appeal before the Appellate Tribunal must be held to be competent. The answer to the second question must, therefore, be also in the affirmative and in favour of the assessee.

In the result, both these questions are answered in favour of the assessee. The assessee will have the costs of this reference.

R. S. NARULA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before I. D. Dua and P. C. Pandit, JJ.

THE STATE OF PUNJAB,—*Petitioner.*

versus

LACHHMAN SINGH,—*Respondent.*

Civil Miscellaneous No. 664-C of 1966.
in
Regular First Appeal No. 136 of 1966.

October 14, 1966.

Limitation Act (XXXVI of 1963)—S. 5—"Sufficient cause"—Meaning of —Considerations to be kept in mind while condoning delay—Government—Whether entitled to special consideration.

Held, that section 5, Limitation Act, does not draw any distinction between the Government and a private party in their capacity of litigants before the Court. Both have to satisfy the Court of the existence of sufficient cause for not making the application within the prescribed period of limitation. The expression "sufficient cause" is of course not defined in the statute but it is certainly not intended to be equated with the mere word " cause" used simpliciter, and the judge of the sufficiency of the cause is the Court which has to apply its judicial mind to all the relevant facts and attending circumstances in which, in a given case, a suitor has failed to make the application within the prescribed period. Keeping in view the fact that expiry of the period of limitation clothes the impugned order with finality rendering it exempt from challenge on appeal, with the necessary consequence of

conferring on the party in whose favour it has been made a very valuable right, the expression "sufficient cause" must be construed to mean a cause beyond the control of the party seeking relief. Here again, the consideration of the question of control of the party has, in view of human imperfection, to be confined within reasonable limits. Those reasonable limits are to be determined by considering whether the party seeking relief has acted in good faith and while doing so has found it beyond his control to present the application within the prescribed time. The expression "good faith" as defined in the Limitation Act, represents due care and attention, for nothing is to be deemed to be done in good faith for the purpose of the Limitation Act which is not done with due care and attention: section 2(h). Now the word "due" has in turn to be construed in the light of the facts and circumstances of each case and the party seeking to show sufficient cause must establish a reasonable sense of anxiety and responsibility in having taken reasonable steps to see that the application is made within the prescribed time. The expression "sufficient cause", subject to what has just been said, may, of course, receive a liberal construction at the hands of the court if such construction is calculated to advance the cause of substantial justice holding the scales even between the contestants. On sufficient cause being shown, the Court has, consistently with the recognised judicial impartiality, to exercise its discretion whether or not to excuse delay and admit the application made after the expiry of limitation.

Held, that the appellant is expected to do everything reasonably possible so as to be able to prefer the appeal within the period of limitation and it is only if due to something beyond his control he is unable to so prefer the appeal that the question of considering sufficient cause arises. In order to exercise its discretion in favour of the appellant, the appellate Court has to be satisfied that the officers acting on behalf of the State have acted in good faith, which means with due care and attention.

Application under Section 5 of the Limitation praying that the delay in the filing of the appeal be condoned and thus the application be allowed.

Original Suit No. 212 of 1964, decided by Shri Gurnam Singh, Additional District Judge, Hoshiarpur, on 5th August, 1965.

G. C. MITTAL, ADVOCATE, for the Advocate-General for the Petitioner.

S. L. PURI, ADVOCATE, for the Respondent.

JUDGEMENT

DUA, J.—This is an application by the State of Punjab under section 5 of the Limitation Act for condoning the delay in filing R.F.A., 136 of 1966 (*Punjab State* v. *Lachhman Singh*). The appeal is directed against an award made by the learned Additional District Judge, Hoshiarpur, under section 18 of the Land Acquisition Act.

The award was made on 5th August, 1965. The application for a certified copy thereof was made on 20th September, 1965. It was delivered to the applicant on 14th December, 1965. The appeal was presented in this Court on 2nd February, 1966. The application under section 5, Limitation Act, contains an averment that limitation for filing the appeal had expired on 28th January, 1966. The reasons for not presenting the appeal on that day, as contained in the said application are:—

(i) That the Legal Remembrancer and Secretary to Government, Punjab, addressed a letter to the Advocate General, Punjab on 5th January, 1966 desiring that an appeal from the judgement of the Additional District Judge dated 5th August, 1965 in the case *Lachman Singh* v. *Punjab State* be preferred in the High Court. It was received in the office of the Advocate-General on 5th January, 1966. A copy of this letter was sent to the Industries and Supplies Commissioner and Secretary to Government Punjab, Industries, Food and Supplies Department for information, which was received in the said office on 6th January, 1966.

(ii) That on 7th January, 1966, the Advocate-General wrote to the Secretary, Industries, enquiring about the difference between the compensation awarded by the Collector and Additional District Judge and also the amount of interest due. It was further requested that requisite court-fee stamp should be made available for prefering the appeal. This letter was received in the office of the Industries Commissioner on 13th January, 1966. By mistake it was delivered to an Assistant of the Industries II Branch who was not concerned with this matter. The said Assistant marked the case to his record-keeper who reported on 15th January, 1966, that the relevant record was not available with him adding that they were not concerned with this case. This letter was thereupon sent to the dealing Assistant concerned on 22nd January, 1966. (In this application it appears to be wrongly recited that the said letter of the Advocate-General was dated 22nd January, 1966.) The dealing Assistant then marked the letter to his record-keeper who put up the relevant record to the Assistant concerned on 25th January, 1966. 26th January, 1966, was a public holiday. From 27th to 29th

January, 1966 the dealing Assistant happened to be on leave. On 28th January, 1966, there was a telephonic message from the Advocate-General to the Industries Commissioner informing him that the limitation for the appeal had expired and the necessary amount for the court-fee, etc., had not been made available. Thereupon, the Superintendent, Industries, traced the letter from the table of the dealing Assistant on 28th January, 1966, and delivered the same to the Deputy Director, Industrial Training Department, at about 3.30 p.m., on that day. On 29th January, 1966, the Under-Secretary Industries, to reproduce the exact language in the application, "also stressed to hurry up deposit of court-fee stamps."

(iii) That on receipt of the letter of the Advocate-General, dated 7th January, 1966, the Principal, Industrial Training Institute, Hoshiarpur, was telephonically requested on the morning of 29th January, 1966, by the Joint Director, Industrial training, Punjab, to make available the necessary amount required for the court-fee, etc. Besides, an official of the Industrial Training Department was sent to Hoshiarpur on 30th January 1966 to collect the necessary amount of money. The said official and the Principal, Industrial Training Institute, Hoshiarpur, brought the money on 31st January, 1966. Attempts were made to purchase the stamps from the local treasury, but the State Bank of India and the treasury having closed their public transaction at 12 noon on account of the fact that 31st January, 1966 was the last working day of the month the attempt failed. Stamps were purchased on 1st February, 1966.

(iv) That on receipt of the letter dated 5th January, 1966, addressed by the Legal Remembrancer and Secretary to Government, Punjab, the dealing Assistant passed the same on to the record keeper on 6th January, 1966. On account of rush of work, the record keeper could not put up the case to the dealing Assistant earlier than 14th January, 1966. On 15th January, 1966, the dealing Assistant put up the case to the Superintendent/Under-Secretary, Industry, along with a draft of the letter to be addressed to the Legal Remembrancer and Secretary to Government, Punjab, containing the Government sanction for the

institution of the appeal. The Under-Secretary, Industry, approved the draft on 18th January, 1966, and the same was sent to the issue branch of the Secretarit for further necessary action. On 20th January, 1966, the letter was issued to the Legal Remembrancer conveying sanction of the Governor of Punjab in respect of the appeal to be instituted in the case. A copy of this letter dated 20th January, 1966, was endorsed to the Director of Industrial Training, Punjab, on the same day for further necessary action. The Director of Industrial Training was on tour and he received the letter on 23rd January, 1966, when he happened to be in Delhi. The Director of Industrial Training then sent down the said letter to his office and the same was received by the Joint Director on 27th January, 1966. This letter was sent by the Joint Director, Industrial Training, to the section concerned for immediate further necessary action.

These are the details of the explanation furnished by the Punjab State for the delay in presenting this appeal and the question arises if these facts justify relief under section 5. Shri Mittal has in support of his submission relied on the following decisions:—

Secretary of State v. *Gurmkhdas, etc.* (1), the head-note of which is in the following terms:—

"In considering an application for extending period fixed by law for presentation of appeal a distinction must be made between Government and a private person. Though any delay is evidence of laches in the case of a private individual, the same cannot be said of Government and so delay can be condoned if it is inevitable."

Messrs K. R. Beri and Company v. *The Employees, State Insurance Corporation* (2). In this decision, after noticing two earlier cases of this Court in the *Union of India* v. *Messrs New India Constructors, Delhi* (3), and *Union of India* v. *Ram Kanwar* (4), the Bench considered it difficult to state as a general rule that delay in Government offices can never constitute a relevant consideration in determining the sufficiency of a cause for condoning delay and indeed,

(1) A.I.R. 1929 Sind 211 (D.B.)
(2) I.L.R. (1961) 2 Punj. 721.
(3) A.I.R. 1955 Punj. 172.
(4) I.L.R. 1958 Punj. 960.

according to the Court, each case must depend on its own circumstances for coming to a decision as to how far a litigant had been reasonably diligent in prosecuting his case. The last decision cited by Shri Mittal is *Ramlal and others* v. *Rewa Coalfields* (5), (Gajendragadkar, J., (as he then was) and Wanchoo, J.), head-note (a) of which is in the following terms:—

> "The failure of appellant to account for his non-diligence during the whole of the period of limitation prescribed for the appeal does not disqualify him from praying for the condonation of delay under section 5. Where the appellant did not file the appeal till the last day of limitation and as he fell ill on the last day of limitation, he filed the appeal thereafter asking for the delay to be excused, it was held that his want of diligence till the last day of limitation would not disqualify him from applying for the execusing of delay."

In addition to this head-note the following passage at p. 364 has also been relied upon on behalf of the appellant :—

> "It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period; and so *prima facie* it appears unreasonable that when delay has been made by the party in filing the appeal, it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of section 5."

It may, however, be helpful to reproduce some other passage from this decision as well. Thus spoke the Court at p. 363:—

> "In construing section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained benefit under

(5) A.I.R. 1962 S.C. 361.

the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice."

And again at p. 365:—

"It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by section 5. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown, then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its *bona fides* may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it."

On behalf of the respondent, Shri S. L. Puri, has very strongly pressed upon us the conclusion of the Bench decision in *Ram Kanwar's case. He has relied upon Collector of Bilaspur* v. *Santu* (6), a decision by C. B. Capoor, J.C., in which following the Bench decision of his Court in *Ram Kanwar's case,* it is observed that for the purpose of section 5, Limitation Act, the Government and private individuals should be treated alike and extension of time under that section cannot be granted merely on the ground that the prescribed period of limitation was not sufficient so far as the Government was

(6) A.I.R. 1962 H.P. 16.

concerned. A Bench decision of the Lahore High Court in *George Gowshala* v. *Balak Ram* (7), has been cited by Shri Puri for the view that in order to have the benefit of section 5, Limitation Act, it is the duty of the appellant to explain the delay for every day that elapses beyond the period allowed by the Limitation Act for filing the appeal. For his proposition, support has also been sought from a Bench decision of this Court in *Om Sarup* v. *Gur Narain* (8). The last decision cited by Shri Puri is *Union of India* v. *Ram Charan* (9), but this decision does not directly deal with section 5 of the Limitation Act.

I have considered the arguments addressed at the bar and have devoted serious attention to the grounds on which extension of time under section 5 is sought. Before dealing with the grounds, I shall like to state the legal position as I understand it. Section 5, Limitation Act, does not draw any distinction between the Government and a private party in their capacity of litigants before the Court. Both have to satisfy the Court of the existence of sufficient cause for not making the application within the prescribed period of limitation. The expression "sufficient cause" is of course not defined in the statute but it is certainly not intended to be equated with the mere word "cause" used simpliciter, and the judge of the sufficiency of the cause is the Court which has to apply its judicial mind to all the relevant facts and attending circumstances in which, in a given case, a suitor has failed to make the application within the prescribed period. Keeping in view the fact that expiry of the period of limitation clothes the impugned order with finality rendering it exempt from challenge on appeal, with the necessary consequence of conferring on the party in whose favour it has been made a very valuable right, the expression "sufficient cause" must, in my view, be construed to mean a cause beyond the control of the party seeking relief. Here again, the consideration of the question of control of the party has, in view of human imperfection, to be confined within reasonable limits. Those reasonable limits are, in my opinion, to be determined by considering whether the party seeking relief has acted in good faith and while doing so has found it beyond his control to present the application within the prescribed time. The expression "good faith", as defined in the Limitation Act, represents due care and attention, for nothing is to be deemed to be done in good faith

(7) A.I.R. 1927 Lah. 717.
(8) 1965 P.L.R. 634.
(9) A.I.R. 1964 S.C. 215.

for the purposes of the Limitation Act which is not done with due care and attention; section 2(h). Now the word "due" has in turn to be construed in the light of the facts and circumstances of each case and the party seeking to show sufficient cause must establish a reasonable sense of anxiety and responsibility in having taken reasonable steps to see that the application is made within the prescribed time. The expression "sufficient cause" subject to what has just been said may, of course, receive a liberal construction at the hands of the court if such construction is calculated to advance the cause of substantial justice holding the scales even between the contestants. On sufficient cause being shown, the Court has, consistently with the recognised judicial impartiality, to exercise its discretion whether or not to excuse delay and admit the application made after the expiry of limitaton.

Adverting now to the facts of the present case which have been reproduced earlier, it is quite clear that the copy of the award was secured by the applicant on 14th December, 1965. On 5th January, 1966, the Legal Remembrancer and Secretary to Government, Punjab, intimated to the Advocate-General the decision to file the appeal against the impugned award. A copy of this letter was also forwarded to the Industries and Supplies Commissioner and Secretary to Government, Punjab, Industries and Food Supplies Department, for information. The Advocate-General was prompt enough to inform the Secretary, Industries on 7th January, 1966, seeking information about the difference between the compensation awarded by the Collector and by the Court and also regarding the interest due. A specific request was made that the requisite court-fee stamps should be made available for the appeal to be instituted. From that date upto 28th January, 1966, in my opinion, there was sufficient time for the department concerned, if acting with due care and attention, to arrange for the court-fee so as to be able to fully equip the Advocate-General for making the application complete in all respects to this Court. The causes which, according to the affidavit of the Joint Director, Industrial Training, led to the inability of the department to provide court-fee to the Advocate-General, do not seem to me to be beyond the control of the officers acting on behalf of the State and they can scarcely be considered to have acted with due care and attention in failing to provide the requisite funds for court-fee within the prescribed period of limitation. The affidavit does, of course, show the reason for not making the application within time but it does not seem to me to constitute a sufficient cause within the contemplation of section 5, Limitation Act.

It is, however, argued that diligence of the officers concerned till the last day of limitation is not under the law necessary to be shown and that all they need show is that after the expiry of limitation they have acted with due diligence.

I am unable to agree with this submission. The contention virtually amounts to saying that from the *terminus-a-quo* which is the date of the order or decree to be appealed against to the last day of limitation, there is no obligation on the party intending to appeal to take any steps in that direction and if on the expiry of the period of limitation due care and attention in taking necessary steps for filing the appeal is made out, then relief under section 5 may legitimately be claimed. This clearly does not seem to me to be the legal position. The appellant is expected to do everything rasonably possible so as to be able to prefer the appeal within the period of limitation and it is only if due to something beyond his control he is unable to so prefer the appeal that the question of considering sufficient cause arises. As observed earlier, the reasons furnished for not presenting the appeal within limitation in the present case do not amount to sufficient cause. In any event, I do not find any cogent ground for exercising the discretion of this Court in condoning the delay. In order to exercise its discretion in favour of the appellant, this Court has to be satisfied that the officers acting on behalf of the State have acted in good faith, which means with due care and attention. This, on the narration of facts, they have clearly failed to show. It is quite obvious that they have not devoted to the matter of preferring the appeal, within the time prescribed by mandatory provision of the Limitation Act, the sense of responsibility it called for. On the contrary, an important matter of this type in which a specified time limit has been fixed by law entailing dire consequences on failure to do the needful within the prescribed period, seems to have been handled with, what may well be described as bureaucratic laxity or red tape and want of due care and attention depriving thereby the State of the valuable right of appeal. In such a situation, this Court is unable under the law to condone the delay and we are constrained to disallow the application under section 5, Limitation Act. On the peculiar circumstances of this case, we leave the parties to bear their own costs in this Court but this may not in future be treated as a precedent in disallowing costs in any comparable circumstances.

Prem Chand Pandit, J.—I agree.

B.R.T.