

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1152 of 2015
Date of decision:19.02.2015

Gurdeep Singh

....Petitioner

Versus

Gurneek Singh & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Talwinder Singh, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petitions to the order dated 20.11.2014 (Annexure P4), passed by the Addl.District Judge, Fast Track Court, Ludhiana, whereby the application for condonation of delay has been dismissed on the ground that there was delay of 221 days in filing the appeal and no explanation has been given.

The Lower Appellate Court has noticed that even if the medical certificate dated 03.07.2012 is taken into consideration, the petitioner has failed to explain the delay, thereafter, since the appeal along with the application was only filed on 14.12.2012. Accordingly, keeping in view the lack of explanation for condoning the delay and placing reliance upon the judgment of the Apex Court passed in **Mahanagar Telephone Nigam Limited Vs. State of Maharastra & others 2013 (9) SCC 92**, the application was dismissed.

Counsel for the petitioner has submitted that the delay is not of such a nature that it should have not been condoned and submits that the case should be decided on merits rather than being dismissed on the ground of technicalities.

After hearing counsel for the petitioner, this Court is of the opinion that the order passed by the Lower Appellate Court is well justified. Admittedly,

the suit filed by the plaintiff-petitioner for declaration and permanent injunction

was dismissed on 25.02.2012 (Annexure P1). Though the application for certified copy of the said order was applied immediately on 28.02.2012 and same was prepared on 11.04.2012 and supplied on 12.04.2012, the appeal was only filed on 14.12.2012. In the application for condonation of delay, filed under Section 5 of the Limitation Act, 1963, the plea taken was that the petitioner had fallen ill and had gone for medical treatment and was having a problem with his back and he had been told not to walk. The delay was sought to be explained till 02.07.2012. Not a word was said in the application, which is dated 14.12.2012, as to why there was delay in filing the appeal, thereafter. Counsel for the petitioner has also placed on record the photocopy of the medical certificate whereby he had been advised complete bed rest from 02.05.2012 to 02.07.2012. The certificate has been issued by an MBBS Doctor and not by an Orthopaedic and the problem which has been experienced by the petitioner is allegedly a low back ache. The certificate also is only for the treatment till 02.07.2012, for which, the petitioner had been advised complete bed rest. Nothing has been mentioned thereafter as to whether the petitioner was not in a position to move around, thereafter.

The term 'sufficient cause' as provided under Section 5 of the Limitation Act, 1963, for condoning the delay, is an elastic term, as has been held in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another 2010 (5) SCC 459.*** However, it is also settled principle that the concept of liberal approach cannot be taken as a general principle that the delay has to be condoned in all cases without there being any specific averments to explain the reasons for delay. It is also necessary to note that the respondents' rights have accrued in view of the non-filing of the appeal within the specified period of limitation. It is settled principle that the law is for the vigilant and not for those who slumber over their rights, which is also to be

kept into consideration while deciding the said application. In the recent judgment of the Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others 2013 (12) SCC 649** the principles were laid down and it was held that though no precise formula can be laid down but the application for condonation of delay should be scrutinised in the entire gamut of facts. The said principles read as under:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

Keeping in view the above principles in mind, this Court is of the

delay which has occurred in the filing of the appeal and application for condonation of delay before the Lower Appellate Court. The delay over a period of more than 5 months, which has, thus, occurred thereafter, from July, 2012, having not been explained, the scale of justice tilt in favour of the respondents. By directing the Lower Appellate Court to decide the appeal on merits would only give a premium to the negligent conduct of the petitioner.

In such circumstances, no fault can be found in the well reasoned order passed by the Lower Appellate Court and accordingly, the present revision petition is dismissed.

19.02.2015

sailesh

(G.S.SANDHAWALIA)

JUDGE