

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.1217 of 2012(O&M)

Date of decision:13.02.2015

Khurshaid Ram

.....Petitioner

Versus

Gurcharan Rai

.....Respondent

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

Present: Mr.Veneet Sharma, Advocate, for the petitioner.

Mr.Bikramjit Arora, Advocate, for the respondent.

G.S.Sandhawalialia J. (Oral)

Challenge in the present revision petition is to the order dated 16.01.2012 (Annexure P2), whereby the Lower Appellate Court has refused to condone the delay of 685 days in filing the application for restoring the appeal which was dismissed in default on 25.07.2006.

The petitioner, who is the defendant in the suit for possession of land measuring 4 kanals, was aggrieved against the judgment and decree dated 07.09.2000 (Annexure P1), whereby the suit was decreed in favour of the plaintiff-respondent. He filed an appeal which was dismissed in default on 25.07.2006. He, thereafter, filed the application for condonation of delay and for restoration of the Civil Appeal on 02.06.2008, on account of the fact that he was undergoing treatment of his eye as well as bodily injuries, prior to the date of dismissal of the suit. It was alleged that he has totally lost his sight and is unable to come to the Court without the help of two persons and therefore, he could not contact his counsel.

The Lower Appellate Court framed an issue whether there was sufficient ground to set aside the order. In support of his application, the petitioner appeared as AW1 and examined AW2, Buta Ram whereas the plaintiff appeared as RW1. The documents in support of his illness (Exhibit A1 to A7) were produced. The Lower Appellate Court noticed that no record had been produced regarding the alleged fracture of his right leg or that he remained under treatment in the hospital in the month of July and August, 2006 and as to where the petitioner had got the treatment. The record pertaining to the eye treatment was examined and it was noticed that he remained in the eye hospital for 2 days only and accordingly, a finding was recorded that there was a fake plea made in the application and it was a false excuse and no plausible explanation had been given for the inordinate delay. The delay, as noticed above, is of 685 days and the explanation of illness has been disbelieved by the Lower Appellate Court.

Counsel for the petitioner has argued that the appeal should be decided on merits and at least the petitioner should be allowed to agitate for his civil rights.

However, this Court is not in agreement with the argument raised. It is settled principle that for condoning the delay, sufficient cause has to be made out. The appeal herein was dismissed in default wayback on 25.07.2006 and after a period of almost 2 years, i.e., 02.06.2008, the application for restoration was filed along with the application for condonation of delay. The explanation which has been put forth has not been believed and nothing could be demonstrated that the petitioner had spent more time in the hospital than what has been noticed by the Lower Appellate Court and that the petitioner was suffering from such ailment that

he could not file the application within a justified period.

It is settled principle that limitation takes away the right of the parties and if a party slumbers over his rights, he is not entitled for the benefit of condonation. The law is for the vigilant and not for a person who does not litigate for his rights. One cannot lose sight of the fact that the suit is for possession and it was in the interest of the petitioner to delay the proceedings and once the *mala fide* intention is apparent on the face of the record and the explanation is in no manner acceptable on the ground of an ailment which did not exist. 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 scrutinized 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 encapsulate 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.”

Therefore, this Court would be hesitant to condone the delay and disturb the well reasoned order passed by the Lower Appellate Court. In such circumstances, no fault can be found in the well reasoned order passed by the Court below.

Accordingly, finding no merit in the present revision petition, the same is dismissed.

13.02.2015
sailesh

(G.S.Sandhawalia)
JUDGE