

In the High Court of Punjab and Haryana at Chandigarh

CR No.1463 of 2015 (O&M)
Date of decision: 02.03.2015

Abhey Ram and another

.....Petitioners

Versus

Smt. Parveen and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.J.S.Lalli, Advocate
for the petitioners.

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SABINA, J

Petitioners have filed this petition challenging the order dated 23.12.2014 (Annexure P1) whereby application moved by the petitioners seeking condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioners has submitted that the delay in filing the appeal was not deliberate or intentional. In fact, the petitioners were in custody and could not file the appeal within the prescribed period of limitation. Petitioners came to know about the passing of the judgment and decree dated 16.4.2013, when they had moved an application for copy of the jamabandi on 3.9.2014 and the petitioners came to know that their land had been attached in execution of the decree dated 16.4.2013. In support of his argument, learned counsel has placed reliance on Esha Bhattacharjee vs.

Managing Committee of Raghunathpur Nafar Academy and others

2013(4)RCR(Civil) 785 wherein it has been held 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.”

Respondents had filed a suit for recovery of ₹8,00,000/- along with interest @ 12% per annum as damages/compensation on account of murder of Shamsheer Singh. Suit filed by the respondents was decreed vide judgment/decreed dated 16.4.2013 (Annexure P4). A perusal of the judgment dated 16.4.2013 reveals that the respondents were represented by their counsel-Rajesh Vadhera before the trial Court. Petitioners filed an appeal against the judgment/decreed dated 16.4.2013 along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

The Appellate Court, while dismissing the application for condonation of delay in filing the appeal, has held that the petitioner No.1-Abhey Ram was served through his wife. However, the said petitioner was proceeded ex-parte. So far as petitioner No.2-Sukhbir is concerned, he had appeared and had contested the suit. Petitioner No. 2 is none other than the son of petitioner No.1. Hence, the learned Appellate Court rightly held that the plea taken by the petitioners that they had no knowledge about the pendency of the suit was false. Learned Appellate Court has further noticed that so far as custody certificate of the petitioner No.1 is concerned, he has remained in custody from 6.7.2006 to 30.11.2006 then from 11.4.2008 to 14.4.2008 and then from 15.4.2008 to 12.3.2012. The suit was filed on 14.3.2007 and an application filed by the

respondents to allow them to proceed with the case as indigent person was allowed on 28.8.2009 and the suit was decreed on 16.4.2013. As per the power of attorney available on record, petitioner No.1 had executed the same in favour of B.D.Sharma, Advocate on 27.2.2009. The same was duly attested by Superintendent Jail, Kaithal on 18.7.2008. Written statement was filed by Rajesh Vadhera, Advocate on behalf of the petitioner. The power of attorney by petitioner No,1 in favour of B.D.Sharma Advocate was also available on record. In these circumstances, the plea put-forth by petitioner No.1 that he came know about the passing of the decree on 3.9.2014 stood falsified.

So far as petitioner No.2 is concerned, he remained in custody from 6.7.2006 to 30.11.2006 then from 11.4.2008 to 14.4.2008 and then from 15.4.2008 to 12.3.2012. On the day the judgment and decree were passed, petitioner No.2 was not in custody. Hence, in the present case, delay in filing the appeal could not be said to be bona fide or unintentional.

Petitioners were convicted and sentenced in the criminal case relating to murder of Shamsher. The suit had been filed by the legal heirs of deceased-Shamsher for compensation/damages against the petitioners. The suit filed by the respondents was duly pursued by the counsel for the petitioners. Hence, the petitioners were well aware of the pendency of the suit against them.

In the facts and circumstances of the present case, delay in filing the appeal had rightly not been condoned by the Appellate Court. There is no quarrel qua proposition of law settled vide

judgment relied upon by the learned counsel for the petitioner but the same fails to advance the case of the petitioner.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 02, 2014
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