

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1811 of 2015(O&M)
Date of decision : August 25, 2015

Savinder Singh
..... Petitioner
Versus

Punjab State Warehousing Corporation and another
..... Respondents

CR No. 1812 of 2015(O&M)

Savinder Singh
..... Petitioner
Versus

Punjab State Warehousing Corporation and another

CR No. 1813 of 2015(O&M)

Savinder Singh
..... Petitioner
Versus

Punjab State Warehousing Corporation and another
..... Respondents

CR No. 1814 of 2015(O&M)

Savinder Singh
..... Petitioner
Versus

Punjab State Warehousing Corporation and another
..... Respondents

CR No. 1815 of 2015(O&M)

Savinder Singh
..... Petitioner
Versus

Punjab State Warehousing Corporation and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Atul Jain, Advocate
for the petitioner.

Mr. Jastej Singh, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This order of mine shall dispose of Civil revision Nos. 1811 to 1815 of 2015 as common question of law and fact is involved in all the aforementioned petitions.

The petitioner-defendant is stated to have filed an appeal against the judgments and decrees of the trial court whereby suit for recovery of the respondent-plaintiff had been decreed.

Mr. Atul Jain, learned counsel appearing on behalf of the petitioner submits that the petitioner-defendant did not have sufficient means to pay the court fee, therefore the appeals were filed belatedly as an indigent person. Certified copy of the same was applied after expiry of limitation period, therefore delay of 85 days in four cases and 49 days in one case has occurred. Delay was not intentional but owing to paucity of funds.

He further submits that in case the appeal is heard on merits, no pre judice would be caused to the other side. In support of his contentions he has relied on the judgment of Hon'ble

Supreme Court rendered in Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others. (2013)

12 Supreme Court Cases 649.

Mr. Jastej Singh, learned counsel appearing on behalf of respondent No.2 submits that the delay was intentional and certified copy admittedly was applied after expiry of limitation period. Therefore, no reasonable and plausible explanation for seeking condonation of delay has been given. The lower appellate court has rightly dismissed the appeals.

I have heard learned counsel for the parties and appraised the paper book.

The Hon'ble Supreme Court in Esha Bhattacharjee's case (supra) while condoning the delay, has culled out the following principles:-

“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.”

For the reasons stated above that the petitioner did not have sufficient funds and the delay was not intentional in filing the appeal and for the reasons explained in the application which have not been considered by the lower appellate court while declining the application for condonation of delay as well as dismissing the appeal on ground of delay. The lower appellate court did not notice that the appeal had been filed as an indigent person.

In view of what has been observed above, the appeals filed by the petitioner-defendant are restored back to their original numbers. The lower appellate court shall decide the appeals on merits after deciding the application under Order 33 Rule 1 CPC in accordance with law.

The civil revisions stand disposed of.

(AMIT RAWAL)
JUDGE

August 25, 2015
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