

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 2798 of 2015 (O&M)
Date of Decision: 10.07.2015

Mahant Ramji Dass Chela Mahant Badri Dass (deceased)
through his Legal Representative.

.....Petitioner

Vs.

Charanji Lal (deceased) through his Lrs and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Parshotam Lal Singla, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 12.12.2014, whereby application moved by the petitioner for condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioner has submitted that delay in filing the appeal was neither intentional nor deliberate. The delay in filing the appeal was liable to be condoned.

In support of his arguments, learned counsel for the petitioner has placed reliance on the decision of Hon'ble Supreme Court in **State of Bihar vs. Kameshwar Prasad Singh** 2000 (2) S.C.T. 889, wherein it was held as under:-

“Power to condone the delay in

approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. [1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice

and is expected to do so."

In the present case, petitioner had filed suit for declaration. The suit filed by the petitioner was dismissed by the trial Court vide judgment/decreed dated 20.08.2011. Against the said judgement and decree, petitioner preferred an appeal. Along with appeal an application under Section 5 of the Limitation Act, 1980 (for short 'the Act') was filed seeking condonation of delay in filing the appeal. Vide the impugned order, the said application was dismissed. Hence, the present petition.

The case of the petitioner as per her application under Section 5 of the Act was that delay had occurred in filing the appeal as talks regarding compromise were going on between the parties. In the reply to the said application, it was denied by the respondents that talks regarding compromise between the parties were going on.

On the pleadings of the parties, following issues were framed by the Appellate Court:-

"1. Whether there are sufficient grounds to condone delay ten months? OPA

2. Relief."

In order to prove her case, petitioner appeared in the witness box as PW-1 and respondents examined Tarloki Nath as RW-1. While appearing in the witness box, petitioner pleaded that when the suit was decided in the trial Court, she had gone abroad and on return, she had applied for the certified copies of the judgment and decree. Thereafter, some respectable persons intervened to effect a compromise between the parties and due to

this reasons, the appeal could not be filed within stipulated period.

Suit was dismissed vide judgment/decreed dated 20.08.2011. Appeal was filed on 03.08.2012. In order to establish her plea that the petitioner had gone abroad, she had not placed on record any documentary evidence. Hence, learned trial Court rightly held that the petitioner had failed to establish that she had gone to a foreign country at the time of passing of a decree.

So far as the plea of the petitioner that talks regarding compromise between the parties were going on is concerned, the said plea was denied by the respondents. Petitioner had failed to examine any independent witness in support of her plea that talks regarding some compromise between the parties were going on.

In these circumstances, the learned Appellate Court rightly held that the petitioner had failed to establish that the delay in filing the appeal was neither intentional nor deliberate. There is no quarrel to the proposition of law settled by the judgement relied upon by the learned counsel for the petitioner but the same fails to advance the case of the petitioner as in the present case, the delay in filing the appeal could neither be said to be *bona fide* nor unintentional.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 10, 2015
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