

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 2799 of 2014

Date of Decision: 12.05.2015

Balwindwer Singh alias Binder Singh and another

.....Petitioners

Vs.

Lakhvir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Binderjit Singh, Advocate,
for the petitioners.

Mr. Onkar Singh, Advocate,
for the respondents.

SABINA, J.

Petitioners has filed this petition challenging the order dated 10.03.2014, whereby application moved by the respondents for condonation of delay in filing the appeal, was allowed.

Learned counsel for the petitioners has submitted that the First Appellate Court had erred in allowing the application for condonation of delay in filing the appeal as there was unexplained delay of eight months in filing the appeal. Respondents took sixty three opportunities to enable them to conclude their evidence but had failed to lead any evidence before the trial Court.

Learned counsel for the respondents, on the other hand, has submitted that the respondents could not file the appeal within

the prescribed period of limitation as they had not been informed by their counsel qua the decision of the suit.

It has been held by the Apex Court in **Collector Land Acquisition Ananatng and other vs. Mst. Katiji and others** AIR 1987 SC 1353 which read as under:-

“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 consideration 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”.

The suit was decreed by the trial Court vide judgment/decreed dated 11.08.2011. Petitioners are the legal heirs of

deceased Ranjit Singh. Respondents challenged the judgment/decreed dated 11.08.2011 by way of an appeal. Along with the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay in filing the appeal. Issues were framed by the trial Court on the pleadings of the parties. Parties led their evidence in support of their respective pleas. The case of the respondents was that the delay of eight months in filing the appeal had occurred as their counsel had failed to inform them about the decision of the case. Thus, the delay in filing the appeal under the circumstances could not be said to be intentional or *mala fide*. Learned appellate Court in the facts and circumstances of the present case had rightly condoned the delay in filing the appeal. Now the appeal filed by the respondents will be disposed of on merits.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

May 12, 2015
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