

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 4417 of 2015 (O&M)
Date of Decision: 16.07.2015

Daljit Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Diwan S. Adlakha, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 15.04.2015, whereby application moved by the petitioner under Section 5 of the Limitation Act, 1980 seeking condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioner has submitted that the delay in filing the appeal was neither intentional nor deliberate. In fact the counsel who was pursuing the case of the petitioner before the trial Court had not informed the petitioner qua the dismissal of the suit. Due to this reason, the delay in filing the appeal had occurred.

In support of his arguments, learned counsel for the petitioner has placed reliance on the decision of Hon'ble Supreme Court in **Chandan Singh** vs. **National Insurance Co. Ltd. And another** 2015 (1) RCR (Civil) 920, wherein it was held that the Courts and tribunals are required to examine the case of the litigants on merits and not reject the cases at the threshold on technicalities i.e. on the ground

of delay.

Learned counsel has next placed placed reliance on the decision of Hon'ble Apex Court in **Executive Officer, Antiyur Town Panchayat** vs. **G. Arumugam (D) by Lrs.** 2015 (2) RCR (Civil) 337, wherein it was held as under:-

*“As held by this Court in **State of Nagaland v. Lipok Ao and others**, 2005 (2) R.C.R. (Civil) 375: (2005) 3 SCC 752, the Court must always take a justice-oriented approach while considering an application for condonation of delay. If the Court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the Court, in view of the larger public interest, should take a lenient view in such situations, condone the delay, howsoever huge may be the delay, and have the matter decided on merits.”*

Learned counsel has next placed placed reliance on the decision of Hon'ble Apex Court in **Improvement Trust, Ludhiana** vs. **Ujagr Singh and others** 210 (6) SCC 786, wherein it was held as under:-

“While considering the application for condonation of delay no straight jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves.”

Learned counsel has next placed placed reliance on the decision of Hon'ble Apex Court in **N. Balakrishnan** vs. **M. Krishnamurthy** 1999 (2) RCR (Civil) 578, wherein it was held as

under:-

“It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

In the present case, petitioner had filed suit for declaration to the effect that his correct date of birth was 05.04.1960 but due to inadvertence in the school record, his date of birth had been recorded as 01.01.1958. Petitioner was working with Ambala District Co-operation Milk Producers Union Ltd. Ambala since 26.06.1985. In October, 2009, case of the petitioner was being considered for departmental promotion and at that stage his brother Amarjit Singh informed him that his correct date of birth was 05.04.1960. Suit filed by the petitioner was dismissed by the trial Court vide judgment/decreed dated 31.08.2013.

Aggrieved against the said judgment/decreed, petitioner

preferred an appeal. Along with the appeal, an application under Section 5 of the Limitation Act, 1980 was filed seeking condonation of delay of 288 days in filing the appeal. The plea put forth by the petitioner was that his counsel had not informed him qua the decision of the suit. Petitioner is working as Assistant Manager with respondent No. 3 at Ambala. The case of the petitioner was also pending in the Court at Ambala. Hence, it is not believable that the petitioner had not been pursuing his case in the trial Court. The petitioner has taken the plea that he had been visiting his counsel to know about his case but his counsel had not informed about the dismissal of the case. However, there is nothing on record to suggest that the petitioner had taken any action against his counsel, in this regard.

I have gone through the judgments relied upon the learned counsel for the petitioner and am conscious of the fact that while dealing with an application seeking condonation of delay in filing an appeal, a liberal approach is required to be adopted. In the present case, the delay in filing the appeal cannot be said to be *bona fide* or unintentional. Hence, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

In the facts and circumstances of the present case, the learned Appellate Court rightly came to the conclusion that the delay in filing the appeal was not liable to be condoned.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 16, 2015
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