

203

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5265 of 2010 (O&M)

Date of decision: March 11, 2015

Ludhiana Improvement Trust, Ludhiana

.....Petitioner

Versus

Bhagwanti and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Amit Singh, Advocate
for the petitioner.

Mr. Naresh Gopal Sharma, Advocate
for the respondents.

SABINA, J

This petition has been filed challenging the order dated 13.06.2008 whereby application moved by the petitioner 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. Infact, there had been lack of communication between the counsel for the petitioner-trust and the petitioner/trust. Due to this reason, delay had occurred in filing appeal against the judgment/decreed dated 03.12.2004 (Annexure P-3).

Learned counsel for the respondent, on the other hand has opposed the petition.

It has been held by the Apex Court in **Collector Land Acquisition Ananatnag and others vs. Mst. Katiji and others**, AIR 1987 SC 1353 which reads 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.”

In the present case, plaintiff Bhagwanti had filed

suit for mandatory injunction and permanent injunction directing the petitioner-trust to allot the plot measuring 150 sq. yards being local displaced person in the scheme circulated by the petitioner-trust. Petitioner-trust was proceeded *ex parte* and the suit filed by the plaintiff Bhagwanti was decreed vide judgment/decreed dated 03.12.2004. Application filed by the petitioner-trust for setting aside the *ex parte* judgment/decreed, was dismissed on 03.11.2004. Thereafter, appeal against the judgment/decreed (Annexure P-3) was filed by the petitioner-trust alongwith an application for condonation of delay in filing the appeal. The plea taken by the petitioner-trust was that they had not been communicated by their counsel qua the proceedings in the case. Hence, the delay in filing the appeal cannot be said to be intentional or deliberate. Petitioner-trust had nothing to gain by not pursuing the case. Moreover, in case the delay in filing the appeal had been condoned by the Appellate Court, the appeal filed by the petitioner-trust would have been disposed of on merits.

Accordingly, this petition is allowed. Impugned order dated 13.06.2008, whereby application moved by the petitioner seeking condonation of delay in filing the appeal, was dismissed and consequently, order dated 13.06.2008, whereby appeal was dismissed being time barred (Annexures P-6 and P-7, respectively) are set aside. Consequently,

application moved by the petitioner-trust under Section 5 of the Limitation Act, 1963 is allowed and delay in filing the appeal, is condoned. Appellate Court is directed to dispose of the appeal filed by the petitioner-trust against the judgment and decree dated 03.12.2004 (Annexure P-3) on merits. parties are directed to appear before the Appellate Court on 20.04.2015.

**(SABINA)
JUDGE**

March 11, 2015

m.singh