

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

**CR No.4417 of 2013 (O&M)
Date of decision:27.11.2015**

Jai Chand

... Petitioner

Vs.

Prem Chand and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Umesh Kumar, Advocate
for the petitioner.

Mr. S.K.Sharma Budhladawale, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff has impugned the order dated 01.03.2013 vide which the appeal has been dismissed being barred by law of limitation. In essence, the appeal filed, was barred by 176 days.

Mr. Umesh Kumar, learned counsel appearing on behalf of the petitioner submits that the petitioner was suffering from various ailment, therefore, could not file the appeal against the judgment and decree dated 11.05.2011 vide which the suit for possession had been dismissed. In support of his aforementioned contention, he relied upon the judgment of the Hon'ble Supreme Court in Esha

Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others **(2013) 12 Supreme Court Cases 649** and prays that no prejudice would be caused to the defendant-respondents, in case, the appeal would be heard on merits.

Mr. S.K.Sharma Budhladawale, learned counsel appearing on behalf of the respondents submits that there is no reasonable explanation, much less, no cause given for seeking condonation of delay and therefore, the application has rightly been dismissed. The excuses given in the application are not segment to the medical record proved on record.

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

The Hon'ble Supreme Court in **Esha Bhattacharjee's** case (supra) 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 encapsulate 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.

xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

In view of the aforementioned observations, I am of the view that no harm would be caused to the respondent-defendants, in case, the appeal is heard and decided on merits as the defendants are in possession on the basis of the oral and documentary evidence. The whole purpose and idea is that for effective

adjudication of the matter and the law of limitation if explained validly right should not come in way.

The explanation given in the application is plausible, therefore, the application seeking condonation of delay of 176 days, is hereby, allowed. Accordingly, the impugned order is set aside and the matter is remitted back to the lower Appellate Court to decide the appeal on merits.

Accordingly, the revision petition is allowed.

Parties through their counsel are directed to appear before the trial Court on 11.12.2015.

However, this order of mine shall be subject to payment of costs of ₹10,000/-, to be paid to the counsel for the defendant-respondent in the High Court.

(AMIT RAWAL)
JUDGE

November 27, 2015
savita