

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

Civil Revision No. 4473 of 2012

Date of decision: November 30, 2015

Pritam Kaur

-Petitioner

Versus

Thandu Ram @ Thandu Singh and ors.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Chahal, Advocate
for the petitioner.

Mr. Nandan Jindal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

{1}. This is a revision petition against the order dated 09.04.2012 passed by District Judge, Sangrur, dismissing the application under Section 5 of the Limitation Act filed alongwith the appeal. Plaintiff filed suit for declaration and permanent injunction which was dismissed by the trial Court vide judgment and decree dated 12.04.2010.

{2}. Appeal was instituted against the said judgment and

decree of the trial Court alongwith application under Section 5 of the Limitation Act. On 21.12.2011, plaintiff alleged that she is an old and illiterate lady. Her movements are restricted on account of ailment. She was hospitalized in Gulzar Bone and Joint Hospital on 16.05.2010 and remained hospitalized till 02.06.2010. In the meanwhile, she was operated upon on 22.05.2010 and since then, she is bed ridden and unable to walk. By virtue of her ailment, she could not contact her lawyer, nor any communication was received by her from the office of her counsel. The sister of the applicant-petitioner informed her about the decision of the case on 13.12.2011 and accordingly, appeal was filed alongwith miscellaneous application on 20.12.2011.

{3}. Learned counsel for the petitioner states that even before hospitalization, the petitioner was ailing and due to stiffness, she could not move out. The petitioner from 12.04.2010 i.e. the date of passing of judgment and decree by the trial Court till hospitalization of the applicant on 16.05.2010 has explanatory background inasmuch as that the applicant remained almost confined to bed and ultimately hospitalized on 16.05.2010.

{4}. For the period from discharge i.e. 02.06.2010 till the filing of the appeal i.e. 20.12.2011, the after effects of operation made the applicant totally confined and to take bed rest.

Moreover, prior to 13.12.2011, the applicant never thought of any decision from the Court for want of communication from the side of her counsel, nor she had any clue of it from any other source. Therefore, both the intermissions i.e. before hospitalization from 12.04.2010 to 16.05.2010 and after discharge i.e. 02.06.2010 to 20.12.2011 are not directly proportional to any latch or omission on behalf of the petitioner.

{5}. On the other hand, learned counsel for the respondent has vehemently argued that the petitioner cannot take benefit of her own wrong. The explanation given by her is totally unsatisfactory and huge delay of 589 days is not to be condoned. Learned counsel cites Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai, 2012 (3) RCR (Civil) 73, Basawaraj and another vs. Special Land Acquisition Officer, 2014 (1) RCR (Civil) 603 and Union of India vs. Nripen Sarma, 2011 (5) RCR (Civil) 187 to contend that without sufficient cause, delay should not be condoned and law of limitation has to be followed with all rigour when the statute so prescribes. The period of limitation should not be condoned on equitable grounds.

{6}. As against this, learned counsel for the petitioner relies upon Imrat Lal and others vs. Land Acquisition Collector and others, 2015 (1) SCC (Civil) 242 on the ground that the villagers in

the country side area are illiterate and the Court while condoning the delay should adopt liberal approach. Learned counsel further cites *Executive Officer vs. G Arumugam (D) by Lrs, 2015 (2) P.L.J.R. (SC) 195* to contend that in the cited case, delay was sought to be condoned by the department. High Court declined to condone the delay for want of sufficient cause. Hon'ble Supreme Court was pleased to condone the delay even after observing that the delay was on account of deliberate lapse on the part of Executive Officer. The Court should take a lenient view and condone the delay how so huge it may be and the matter should be decided on merits. Case was accordingly remitted to the High Court.

{7}. While deciding the aforesaid case, the Hon'ble Apex Court relied upon the earlier judgment pronounced by it in *State of Nagaland vs. Lipok AO, 2005 (2) RCR (Civil) 375* to say that the Court must always take a justice oriented approach while considering an application for condonation of delay. In both the aforesaid judgments, even a contrast situation has been discussed that even if an attempt has been made on the part of the government official to affect justice by causing delay, the Court in larger public interest should take lenient view and condone the delay.

{8}. In *B.T. Purushothama Rai vs. K.G. Uthaya and others*, *2011 (14) SCC 86*, the Hon'ble Apex Court even condoned delay of 21 years. The principle highlighted was that the primary function of a Court is to adjudicate between the parties and advance substantial justice. The object of providing legal remedy is to repair the damage caused as a result of legal injury. No explanation of mala fide can be presumed in the instant case as the petitioner was nothing to gain by lodging the appeal late before the First Appellate Court.

{9}. In the year 1987, the Hon'ble Apex Court in a well elaborated judgment in *Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107* held that the technicality should not be pitted against the cause of justice. Substantial cause of justice has to prevail. Meritorious matter cannot be thrown at the very threshold of technicality. Even in the present case, the petitioner has successfully demonstrated the pathetic state of health suffered by her while pursuing her legal remedies. Once the nature of injury was such for which she was hospitalized, it cannot be taken that said injury started troubling the petitioner on 16.05.2010 itself. It is only in this background, it has to be taken that even before hospitalization of the petitioner, she was suffering from this ailment and in all probability, she could not

contact her lawyer on account of her restraint in not moving freely. Even after discharge on 02.06.2010, she was sufficiently prevented from making any visit to the office of her lawyer and it was only on 13.12.2011 when she was informed about the decision of the case, she promptly filed appeal alongwith application for condonation of delay on 20.12.2011.

{10}. Having considered the rival contentions in the aforesaid background, this Court feels that interest of justice would be squarely met if delay of 589 days in filing the first appeal before the First Appellate Court is condoned. Ordered accordingly. First Appellate Court is directed to decide the appeal on merits. Both the parties are directed to appear before the First Appellate Court i.e. Addl. District Judge, Sangrur on 08.01.2016.

30.11.2015

jyoti

**(RAJ MOHAN SINGH)
JUDGE**