

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

CR No.4787 of 2015.

Date of Decision: 21.08.2015.

Amarjit Kaur

....Petitioner.

VERSUS

Punjab State Power Corporation Limited and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vipin Mahajan, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 18.04.2015 passed by learned Additional District Judge, Gurdaspur, vide which the application under Section 5 of the Limitation Act filed by respondents No.1 and 2 for condonation of delay in filing the appeal was allowed.

The facts which gave rise to the instant revision petition are that a suit for declaration was filed by Smt. Rajwant Kaur-respondent No.3 claiming that she was entitled to receive all sort of benefits including pension, gratuity, exgratia etc. alongwith interest on account of death of her husband. She also prayed that her daughter Amarjit Kaur is entitled to get

service in Punjab State Power Corporation Limited as clerk on compassionate ground as she had relinquished her right to get service and had given no objection in favour of her daughter.

The suit of the plaintiff was decreed vide judgment and decree dated 23.07.2012 passed by learned Civil Judge (Junior Division), Batala.

The Punjab State Power Corporation, Patiala and another (respondents No.1 and 2 in the suit) filed an appeal before learned District Judge, Gurdaspur assailing the judgment and decree dated 23.07.2012. Since the appeal was filed after expiry of the limitation period, an application under Section 5 of the Limitation Act for condonation of delay was filed alongwith the appeal. The appellate Court framed the following issues:-

- (1) Whether there is sufficient grounds to condone the delay in filing the appeal? OPP.
- (2) Relief.

The appellants and respondents No.1 and 2 led ocular and documentary evidence in support of their contentions. Considering the evidence adduced, the delay in filing of the appeal was condoned subject to payment of costs of Rs.2500/- to the petitioners-respondents in the appeal.

Feeling aggrieved by the said order passed by learned Additional District Judge, Gurdaspur, the petitioner filed the instant petition.

The submissions made by learned counsel representing the petitioner have been considered.

The only argument raised by learned counsel for the petitioner was that in the application for condonation of delay filed by appellants-respondents No.1 and 2 neither the period of delay was mentioned nor any specific reason was assigned to explain the delay of each day. The application was also not supported by an affidavit as per provisions of Order 41 Rule 3-A of the Code of Civil Procedure (for short, “the Code”). The witness examined by the appellants-respondents No.1 and 2 could also not offer any sufficient cause for condonation of delay. In fact, he even did not have the knowledge of facts and circumstances in which the appeal had been filed.

Learned counsel contended that there was a delay of about three months in filing the appeal and there being no sufficient ground to explain the delay, learned first appellate Court wrongly allowed the application.

There appears to be no force in the argument of learned counsel for the petitioner. Admittedly, respondent No.1 is a Corporation. For taking a decision to file an appeal, the file has to go through a lengthy procedure and has also to go through several hands. Except for some procedural lapses no malafide is attributed to the delay in filing the appeal. It is expedient and in the interest of justice that rights of the parties are adjudicated upon on merits and are not debarred from being heard on technical grounds especially when there is no malafide intention on part of the party committing lapse. It has been held by the Apex Court in **Improvement Trust, Ludhiana Vs. Ujagar Singh and others 2010(2) SCC (Civil) 798**

that 'unless mala fides are writ large on conduct of the party, generally as a normal rule delay should be condoned. Attempt should be made to allow the matter to be contested on merit rather than disposing it of on technicalities at the threshold'.

Thus, there being no illegality or perversity warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

21.08.2015.
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