

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

**CR No.5170 of 2015 (O&M)
Date of decision: 24.09.2015**

Harcharan Singh

... Petitioner

Vs.

Punjab State Civil Supplies Corporation Ltd. & others

... Respondent

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. O.P.Kamboj, Advocate, for the petitioner.

Mr. Anil Kumar Sharma, Advocate, for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned order dated 26.03.2015, whereby, the appeal along with application seeking condonation of delay in filing the appeal, has been dismissed.

Mr. O.P.Kamboj, learned counsel appearing on behalf of the petitioner submits that delay of 66 days had occurred in filing the appeal, as he acquired the copy of judgment and decree dated 01.06.2013 on 17.08.2013 and the Court below without framing issues, dismissed the same summarily. In support of his aforesaid 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, whereby, the principles for seeking condonation of delay

have been laid down which are reproduced herein below:-

“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.”

The present case falls within the parameters of the principles relied upon by the Hon'ble Supreme Court.

In view of what has been observed above, delay of 66 days in filing the appeal before the lower Appellate Court, is condoned. The appeal is restored to its original number. The impugned order dated 04.09.2013 dismissing the appeal and application seeking condonation of delay is hereby set aside and the lower Appellate Court is directed to decide the appeal on merits, in accordance with law.

It is expected that the lower Appellate Court shall decide the appeal, as expeditiously as possible, preferably within a period of eight months, from the date of receipt of certified copy of this order.

Parties through their counsel are directed to appear before the District and Sessions Judge, Ferozepur, on 15.10.2015.

(AMIT RAWAL)
JUDGE

September 24, 2015
savita