

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

**CR No.5658 of 2015
Date of decision: 01.09.2015**

Gurmeet Kaur

... Petitioner

Vs.

Darshan Singh (deceased) through LRs & 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. Sudhir Paruthi, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 06.05.2015, (Annexure P-3), whereby, the application filed by the respondent, under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the Limitation Act), seeking condonation of delay in filing the appeal, has been allowed.

Mr. S.K.Paruthi, learned counsel appearing on behalf of the petitioner/decreed holder submits that there were two judgments and decrees. However, the defendant only filed the appeal against one judgment and decree and the second appeal was filed after a gap of two years and the application under Section 5 of the Act, was also filed at a belated stage. The lower Appellate Court without giving opportunity to the petitioner, to rebut the contents of the application,

framed the issues but yet erroneously condoned the delay of two years. He further submits that the impugned order suffers from illegality, infirmity and perversity having been passed without jurisdiction, therefore, is liable to be set aside.

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

No doubt, rigor of the provisions of the Limitation Act should be construed diligently and within a reasonable period, but the fact remains that two decrees had been passed and the lower Appellate Court observed that inadvertently, the appellant before the lower Appellate Court did not challenge the other decree. However, the appeal against another decree had been filed within prescribed period. It is in these circumstances, application for seeking condonation of delay under Section 5 of the Act had been filed.

The Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others* **(2013) 12 Supreme Court Cases 649** laid down the principles for seeking condonation of delay 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 my view, there is no illegality and perversity in the impugned order as no prejudice would be caused to the petitioner/decreed holder, as there is chance to defend decree in the pending appeal.

There is no merit in the revision petition.

Accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

September 01, 2015
savita