

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

C.R.No.5670 of 2014 (O&M)

Date of Decision: December 8, 2015

Smt.Bimla & another

...Petitioners

Versus

Mahender & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Ashish Naik, Advocate,
for the petitioners.

Mr.M.P.S.Chandel, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

Petitioners are aggrieved of the order dated 9.12.2013, whereby the appeal filed against the judgment and decree has been dismissed being barred by delay of 3 years and 305 days.

This Court, while issuing notice of motion, passed the following order:-

“The petitioners are wife and son of late Sh. Bhagmal, who died on 25.11.2002 during the pendency of the suit. The suit was decreed in the year 2008. Bhagmal was arrayed as a proforma defendant in the suit. The suit was for declaration based on a testamentary Will executed by the predecessor-in-interest of Ghasi Ram, son of Ramji Lal. Ramji Lal had seven sons, three of whom died issueless. The suit was dismissed. In the appeal filed by the unsuccessful Shish Ram, late Bhagmal was impleaded as a proforma respondent without impleading

his LRs, who are the petitioners. On 9.6.2010, the parties to the suit clandestinely entered into compromises (Annexures P-5 & P-6) and the suit was disposed of as compromised. The petitioners on coming to know of these turn of events filed an appeal against the decree, which has been dismissed on the ground that it is barred by limitation, the delay being almost 3 years and 305 days. The date of knowledge of the decree has been ascribed as 25.8.2012 and the appeal was filed on 26.9.2012.

Notice of motion, returnable, for 27.10.2014.”

After noticing the aforementioned facts, I am of the view that the compromise has been entered into and the suit has been disposed of on the basis of the compromise, though at the back of the petitioners and rightly so, they had filed an appeal after acquiring the knowledge on 25.8.2012 and the appeal was filed on 26.9.2012. Thus, the reasons for not approaching the Court have been duly explained, however, the Lower Appellate Court has committed illegality and perversity in not noticing the aforementioned facts. Even in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 Supreme Court Cases 649**, the Hon'ble Supreme Court while condoning the delay, 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 encapsule 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.”

Keeping in view of the aforementioned facts and circumstances, the present case falls within the aforementioned principles. I am of the view that the delay was duly explained and was not wanting any reasons neither was smelling of any malafide. Accordingly, the delay of 3 years and 305 days in filing the appeal is condoned. The impugned order is set-aside the matter is remitted back to the Lower Appellate Court to decide the appeal afresh/on merits.

Revision petition stands allowed.

December 8, 2015
ramesh

(AMIT RAWAL)
JUDGE