

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 6508 of 2011
Date of Decision: 02.7.2015.**

M/s Electrolux Kelvinator Ltd. and othersPetitioners

Versus

Pawan Kumar TahRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Manish Bansal, Advocate
for the petitioners.

None for the respondent.

SABINA, J.

Petitioners have filed this petition under Article 227 of the Constitution of India challenging the order dated 6.6.2011 whereby application moved by the petitioners seeking condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioners has submitted that there was delay of only 14 days in filing the appeal. In terms of the order passed by this Court, petitioners have deposited the principal amount. Delay in filing the appeal was liable to be condoned. In support of his arguments, learned counsel has placed reliance on '**State of Nagaland versus Lipok AO and others, 2005(3) SCC 752**', wherein it was held as under:-

“In O. P. Kathpalia v. Lakhmir Singh 1984 (2) R.C.R.(Rent)

201 : (1984(4) SCC 66) a Bench of three Judges had held

that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. *In Collector Land Acquisition v. Katiji* (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that [Section 5](#) was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not

stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.”

Respondent had filed suit for recovery. Suit filed by the respondents was decreed by the Trial Court vide judgment/decreed dated 29.5.2007. Aggrieved against the said judgment and decree, petitioners had filed an appeal. Along with the appeal, an application for condonation of delay in filing the appeal was filed.

On the pleadings of the parties, following issues were framed in the application for condonation of delay:-

- “1. Whether there are sufficient grounds to condone the delay in filing the appeal ? OPA.*
- 2. Relief.”*

The application filed by the petitioners was dismissed by the First Appellate Court on the ground that Roshan Lal PW-1 had tendered his affidavit Exhibit P-1 but in the said affidavit he had

failed to mention any reason qua the delay in filing the appeal. The witness only deposed qua the merits of the case or with regard to delay in filing the application under Order 37(3) of the Code of Civil Procedure for leave to defend.

Since the witness examined by the petitioners had not stated anything qua the delay in filing the appeal, the First Appellate Court was left with no option but to hold that issue No. 1 had not been proved by the petitioners. There is no quarrel with the proposition of law settled vide the judgment in *State of Nagaland's* case (supra) but the same fails to advance the case of the petitioners as the petitioners had failed to give any explanation with regard to delay in filing the appeal.

In the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 02, 2015
Gurpreet