

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 7161 of 2011

Date of Decision: 03.07.2015

Gram Panchayat of Village

.....Petitioner

Vs.

Balwinder Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Avnish Mittal, Advocate,
for the petitioner.

Mr. H.S. Cheema, Advocate, for
Mr. S.S. Rangji, Advocate,
for respondents No. 1 to 4, 7 to 9 and 11.

SABINA, J.

Petitioner has filed this petition challenging the order dated
26.08.2011.

Learned counsel for the petitioner has submitted that the
petitioner-Gram Panchayat had filed suit for recovery. The said suit was
dismissed, vide judgment/decreed dated 24.04.2008. However, the
ex-Sarpanch Satwinder Kumar did not disclose about the dismissal of
the suit to Sarpanch Surinder Singh, who took over the charge on
30.09.2008. Sarpanch Surinder Singh came to know about the
dismissal of the suit only in March 2010 and after obtaining the certified
copies of the judgment and decree and completion of other formalities,
the appeal was filed along with an application under Section 5 of the
Limitation Act, 1980 seeking condonation of delay in filing the appeal.

The delay in filing the appeal was neither intentional nor deliberate.

Learned counsel for respondents No. 1 to 4, 7 to 9 and 11, on the other hand, has opposed the petition and submitted that the petitioner had failed to explain the delay of 2 years in filing the appeal.

It has been held by the Apex Court in **Collector Land Acquisition Ananatng and other vs. Mst. Katiji and others** AIR 1987 SC 1353 which read as under:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical consideration 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.

5. 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.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so”.

In the present case, suit for recovery of ₹3,68,294/- was filed by Gram Panchayat on account of illegal encroachment by the defendant. Suit was dismissed by the trial Court, vide judgment/decreed dated 24.04.2008. Suit was filed by Sarpanch Satwinder Kumar. The case of the present Sarpanch of the Gram Panchayat is that the ex-Sarpanch Satwinder Kumar did not disclose about the dismissal of the suit, filed by the Gram Panchayat. The Sarpanch Surinder Singh came to know about the dismissal of the suit only in March, 2010 and after completion of necessary formalities, he filed the appeal along with an application seeking condonation of delay in filing the appeal. In the facts and circumstances of the present case, the delay in filing the appeal cannot be said to be intentional or deliberate. Moreover, if delay in filing the appeal had been condoned by the First Appellate Court, the appeal would have been decided on merits.

Accordingly, the petition is allowed. Impugned order dated 26.08.2011 is set aside. Consequently, the application moved by the petitioner under Section 5 of the Limitation Act, 1980 seeking condonation of delay in filing the appeal is allowed. The First Appellate Court is directed to dispose of the appeal on merits in accordance with law.

Parties are directed to appear before the First Appellate Court on 10.08.2015.

**(SABINA)
JUDGE**

July 03, 2015
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