

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7311 of 2012
Date of decision:13.02.2015

Raj Kumar

.....Petitioner

Versus

Mahabir & others

.....Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.A.K.Goyal, Advocate, for the petitioner.

None for the respondents.

G.S.Sandhawalia J. (Oral)

Challenge in the present revision petition is to the order dated 22.09.2012 (Annexure P5), passed by the Addl. District Judge, Jind, whereby the application for restoration of the appeal has been dismissed on the ground of limitation.

The reasoning which prevailed with the Lower Appellate Court was that the appeal had been dismissed in default on 20.07.2011 (Annexure P3) and the application for restoration of the appeal was filed only on 14.09.2011 (Annexure P4), which was beyond the period of 30 days and there was no application for condoning the delay. Reliance was placed upon the judgment of this Court in **Smt. Dev Bala Sehgal Vs. Devinder Pal Sehgal 2001(1) PLR 775** and the judgment of the Bombay High Court in **Sau. Madhavi S. Kulkarni Vs. Vishram S. Bhakre 2007 (5) RCR (Civil) 102** to dismiss the application on the ground that the application had been filed beyond the period of 30 days.

A perusal of the abovesaid judgments would go on to show that in

the case of **Smt. Dev Bala Sehgal** (supra), the issue was regarding an application filed for restoration of the suit which was filed after 30 days from the date of dismissal of the suit in default and the Trial Court had allowed the application by noticing that the plaintiffs could not appear due to compelling reasons, beyond their control. It was, in such circumstances, held that keeping in view the provisions of Article 122 of the Limitation Act, 1963, the application had to be filed within 30 days from the date of the dismissal of the suit and could not be allowed without filing an application for condonation of delay.

Similarly, in the case of **Sau Madhavi S. Kulkarni** (supra), the Trial Court had refused to restore the suit on the ground that the application had been filed after almost 2 years and the said order was not interfered on account of the fact that there was inaction on the part of the petitioner.

In the present case, in the application for restoration of the appeal, no fault has been attributed, as such, to the appellants, rather it has been averred that counsel was busy in the other Court at the time of call of the appeal and in such circumstances, the application had been filed. The fault, thus, did not lie upon the petitioner's, in any manner. It was the fault of the counsel and the petitioner could not be held liable for the said fault of his counsel, who had not appeared on account of his being busy in another Court.

It is settled principle that cases should be decided on merits rather on technicalities and a party should not suffer because of the fault of the counsel. The judgments which have been relied upon, in the facts and circumstances, by the Lower Appellate Court, are not applicable as in those case, the fault was of the client, as such. It has been time and again held that

the word sufficient cause is an elastic term and not each and every days' delay has to be explained. Accordingly, the order 22.09.2012 (Annexure P5) being not justified, the same is quashed and the application for restoration is allowed and the appeal is restored to its original number. The Lower Appellate Court is directed to decide the appeal on merits.

Revision petition stands allowed in the abovesaid terms.

13.02.2015
sailesh

(G.S.Sandhawalia)
JUDGE