

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

**CR No.7700 of 2015 (O&M)
Date of decision:18.11.2015**

Divya and another

... Petitioners

Vs.

Harbans Kaur and others

... 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. Munish Jolly, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned order dated 09.10.2015, whereby, the application seeking condonation of delay of 355 days in filing the appeal against the judgment and decree dated 29.08.2014, has been allowed.

Mr. Munish Jolly, learned counsel appearing on behalf of the appellant-plaintiffs submits that the lower Appellate Court has committed illegality and perversity in condoning the delay on the premise that both the defendants are widows, one of which is 85 years old, whereas, respondents No.1 and 2 moved an application to the Estate Officer, GMADA for implementation of the judgment and decree dated 29.08.2014, ibid and this fact was categorically stated in the reply to the application seeking condonation of delay but the

Court failed to notice the same, thus, there is illegality and perversity in the impugned order.

In support of his aforementioned arguments, he relied upon the judgment of the Hon'ble Supreme Court in **Basawaraj and another vs. Special Land Acquisition Officer (2013) 14 Supreme Court Cases 81**.

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

The law of limitation has time and again been deliberated in various judgments by the Hon'ble Supreme Court and 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.”

Without expressing anything on the merits of the case, which would have far reaching consequences vis-a-vis adjudication of the lis between the parties, I do not intend to interfere with the findings rendered by the lower Appellate Court on the delay. The judgment cited by Mr. Jolly, says that discretion to condone the delay has to exercised judiciously based upon the facts and circumstances

of each case. However, facts and circumstances of the present case reveal that respondent-defendants were not having active knowledge of judgment and decree and the plea that counsel did not inform is acceptable, for the reason that statutory right of challenging the judgment and decree cannot be taken away on the advice of the counsel.

Accordingly, I do not find any illegality and perversity in the impugned order and cannot be said to be passed without jurisdiction.

Revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

November 18, 2015
savita