

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7750 of 2013

Date of Decision: 13.07.2015.

Sukhbir Singh

.....Petitioner

Versus

Municipal Corporation, Jalandhar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Ms. Amandeep Soni, Advocate
for the petitioner.

None for the respondent.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 4.9.2013 whereby application moved by the petitioner under section 5 of the Limitation Act, was dismissed.

Learned counsel for the petitioner has submitted that the suit for permanent injunction filed by the petitioner was dismissed by the Trial Court vide judgment/decreed dated 25.4.2012. Petitioner could not file the appeal within the prescribed period of limitation as his close relative had died on 3.6.2012. The delay in filing the appeal by the petitioner, was neither intentional nor deliberate.

None has appeared on behalf of the respondent.

The Apex Court in '**Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, AIR 1987 Supreme Court, 1353**' has held 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 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.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. 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, on the pleadings of the parties, following issues were framed by the Trial Court:-

- 1. Whether there are sufficient grounds to condone the*

delay in filing the appeal ? OPA

2. Whether application is not maintainable in the present form ? OPR

3. Relief.

Petitioner appeared in the witness box in support of his case. The case of the petitioner is that, although, the petitioner has got the copy of the judgment and decree on 5.5.2012 but could not file the appeal within the period of limitation as his close relative had died on 3.6.2012 and he had to rush to Shahjahanpur (Uttar Pradesh) to attend the last rites and other ceremonies. Hence, in the facts and circumstances of the present case, the delay in filing the appeal cannot be said to be deliberate or intentional. Moreover, petitioner had nothing to gain by delaying the filing of the appeal. In case Appellate Court had condoned the delay in filing the appeal, the appeal would have been disposed of on merits. The application moved by the petitioner seeking condonation of delay in filing the appeal was supported by an affidavit filed by the petitioner.

Accordingly, this petition is allowed. Impugned order dated 4.9.2013 is set aside. Consequently, the application moved by the petitioner under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal is allowed. Appellate Court is directed to dispose of the appeal on merits.

**(SABINA)
JUDGE**

July 13, 2015
Gurpreet