

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 884 of 2012(O&M)
Date of decision : September 28, 2015

Bobby @ Ajay Kumar

..... Petitioner

Versus

Hans Raj and another

..... Respondents

CR No. 892 of 2012(O&M)

Bobby @ Ajay Kumar

..... Petitioner

Versus

Hans Raj and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mukand Gupta, Advocate
for the petitioner.

Mr. Mohit Setia, Advocate for
Mr. Gaurav Chopra, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This order of mine shall dispose of Civil Revision Nos. 884 and 892 of 2012 as the point involved in both the petitions is same.

The challenge in the present petitions is to the impugned order, whereby, the appeal filed by the petitioner has been dismissed on the ground of being barred by law of limitation i.e. by 11 years.

Learned counsel for the petitioner submits that his grand father Budh Ram had filed a suit for possession and permanent injunction and during the pendency of the suit Budh Ram expired. The counsel representing the grand father without seeking consent and vakalatnama of the legal representatives moved an application to implead the legal representatives and the petitioner alone was impleaded as legal representatives. This fact was not brought to the notice of the petitioner. The application bringing on record the legal representatives was not accompanied by an affidavit.

He further submits that the said act on the part of the lawyer is not in discharge of the fiduciary relationship. In support of his contention he has relied upon the judgment in **Himalayan Co-operative Group Housing Society Vs. Balwan Singh 2015 (7) SCC 373.**

He further submits, that on receipt of summons in respect of civil suit, instituted by defendants, acquired the knowledge about the dismissal of the suit, purported to be filed by the grand father, therefore a delay of 11 years occurred in impugning the judgment and decree of the trial court.

Mr. Mohit Setia, learned counsel appearing on behalf of Mr. Gaurav Chopra, the arguing counsel submits, that no explanation, much less reasonable explanation has been given in an application seeking condonation of delay. The court below has rightly dismissed the application, as it was hit by a phenomenal delay of 11 years.

I have heard learned counsel for the parties and

appraised the paper book.

The Hon'ble Supreme Court in Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 Supreme Court Cases 649, while condoning the delay, has culled out the following principles:-

"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 encapsule 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.”

The instant case, squarely falls within the aforementioned principles. Since the application for bringing on record the legal representatives was filed without any affidavit, inference would be drawn that the petitioner did not have knowledge of such application and the pendency of the suit, obviously, after being impleaded could not bring on record the evidence in support of averments made in the suit.

The petitioner acquired knowledge only after receiving summons of the subsequent suit filed by the respondent and thereafter the appeal was filed with promptitude. The court below ought to have taken into consideration such evidence while dealing with the application seeking condonation of delay and pleadings.

Keeping in view the aforementioned facts and circumstances, the impugned order dismissing the appeal on ground of delay is set aside. The delay of 11 years in filing the appeal before the lower appellate court is condoned. The appeal is restored back to its original number.

The matter is remitted back to the lower appellate court. The lower appellate court shall decide the appeal afresh.

The civil revisions are disposed of.

Parties through their counsel are directed to appear before the lower appellate court on 16.10.2015.

(AMIT RAWAL)
JUDGE

September 29 , 2015
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