

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.8812 of 2014

Date of decision: 13.1.2015

Shamsher Singh

...Petitioner

Versus

Surjit Singh and others

...Respondents

CORAM: MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. S.K.Sandhir, Advocate for the petitioner.

G.S.SANDHAWALIA, J, (Oral)

1. The present revision petition is directed against the order dated 2.9.2014 (Annexure P/6) passed by the Additional District Judge, SAS Nagar, Mohali whereby application for condonation of delay in filing the appeal has been dismissed. The judgment appealed against in favour of respondent Surjit Singh is dated 2.11.2012 against which the appeal was filed on 23.6.2013.

2. A perusal of the paper book would go on to show that respondent no.1 filed a suit claiming that one Mohan Singh Pasricha was his real maternal uncle and was owner in possession of Kothi No.411, Phase-4, SAS Nagar, Mohali. It was pleaded that there was a will dated 19.1.2005 in his favour and he thus sought a declaration. General Public was also arrayed as defendant no.6 in the suit which was filed on 9.2.2005. The petitioner filed an application to be impleaded as party in the said suit under Order 1 Rule 10 CPC and was impleaded as party vide order dated 18.1.2011. However, he conveniently chose not to appear and ex parte proceedings were initiated against him on 25.2.2011. He thereafter filed an application for setting aside ex parte order dated 25.2.2011 which was also dismissed by the trial Court on 6.10.2012. Another application was filed

before the trial Court that he intended to file a revision petition against the said order but no such revision petition was filed in this Court. The decree was thereafter passed on 2.11.2012 (Annexure P/2). He applied for the certified copies of the judgment and decree on 23.1.2013 which was prepared and delivered 24.1.2013. He also submitted an application dated 13.2.2013 before the Estate Officer, GMADA, Mohali praying that ownership of the house in question be not transferred to Surjit Singh on the basis of judgment and decree dated 2.11.2012 as he intended to file an appeal. Thus, being aware of the judgment and decree dated 2.11.2012 he chose not to file an appeal even though he was having a certified copy in his hand. The appeal was thereafter filed on 23.6.2013 pleading that his counsel Sh. Kamal Satija did not attend proceedings on his behalf due to illness of his mother who had died in August, 2012. It was also pleaded that Sh. Rajiv Verma, Advocate did not plead his case properly and had not disclosed the date of proceedings to the petitioner and intimate him when he had to appear on the relevant dates or not. It was admitted that he had applied for certified copy on 23.1.2013 and the same was received on 24.1.2013 which was disclosed by his previous counsel on 16.6.2013. The responsibility was thrown upon the counsel that he did not file appeal against the judgment and decree for reasons best known to him inspite of charging fees. Resultantly, delay was sought to be condoned from 2.11.2012 to 23.6.2013. It was also mentioned that he was not aware of the limitation of filing of the appeal.

3. Respondent no.1 contested the application and pleaded that intentionally the suit had not been contested and exparte proceedings had been initiated against the petitioner and he had taken time to approach this Court. It was mentioned that he had forged and fabricated the rent agreement, rent receipts and two unregistered wills relating to the property

of the real maternal uncle of the plaintiff and even FIR No.416 dated 29.8.2006 under Sections 420, 465, 467, 468, 471, 380,120-B, 448, 201, 297 IPC had been lodged. Similar reply was also filed by respondents no.2 to 5 regarding forgery of the wills and issue was framed by the Lower Appellate Court in which the petitioner appeared as a witness (PW-1) whereas on the basis of which findings have been recorded by the Lower Appellate Court noticing the facts in detail that the applicant was very well aware about the judgment and decree dated 2.11.2012 when he approached the Estate Officer, GMADA, Mohali on 13.2.2013. The explanation that his counsel Sh. Kamal Satija, Advocate could not attend the proceedings due to illness of his mother stood falsified because he had been regularly appearing on behalf of the applicant and therefore, the petitioner had full knowledge of the proceedings of the suit and he himself was negligent in defending the suit after becoming party. He had never challenged order dated 25.2.2011 whereby he was proceeded against exparte and whereby his application for setting aside the exparte proceedings had been dismissed on 6.10.2012. To deny the relief, reliance was placed upon the judgment in **Vashishth Nath & others Vs. Deputy Director, Consolidation/Chief Revenue Officer & others** 2013(2) Civil Court Cases 179 (Allahabad) and **Basheer M. Picha Vs. Indian Bank** 2013(3) Civil Court Cases 558 (Kerala) wherein it has been held that once dilatory tactics are adopted, the Court has not to accept the explanation given. Resultantly, the application was dismissed.

4. The findings which have been recorded after recording evidence do not justify any ground to show that there was any sufficient cause which could condone the delay for filing of appeal. It is settled principle that once the parties are aware then bar of limitation would take away their rights and law does not protect the ones who sleep over their

rights. Reference can be made to the judgment of the Apex Court in **Pundlik Jalam Patil (D) by Lrs. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128** has observed as under:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.’

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18. Shri Mohta, learned senior counsel relying on the decision of this court in [N. Balakrishnan vs. M. Krishnamurthy](#) [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand,

in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

5. Recently, the Apex Court in **Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and others** (2013) 12 SCC 649 has laid down the principles for condonation of delay and held that sufficient cause has to be understood in its proper spirit but lack of bonafide has to be kept in mind. The concept of liberal approach cannot permit a free play to let a party to get away with fraud and applications for condonation of delay are not to be dealt with in routine non-serious and non-challant manner. The principles laid down read as under:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- 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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

b) 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.

c) 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.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

6. Resultantly, keeping in view the above principles, this Court is of the opinion that the petitioner is only trying to elongate the agony of the respondents by contesting the litigation whereby respondent no.1 has been granted benefit of the property of the deceased. He was well aware of the proceedings and sought to get himself impleaded as party, had not filed written statement, was proceeded against exparte, thereafter he did not challenge the exparte proceedings and let a final decree passed. Then, once the decree has been passed, he slept over his right inspite of the certified copy of judgment and decree in his hand and now seeks indulgence of this Court to further perpetuate the agony of the respondent. In such circumstances, the present petition is patently malafide. This Court will not be a willing partner to delay the proceedings which is the apparent game of petitioner, who admittedly was an employee in the Trust set up by the deceased.

7. Accordingly, the present revision petition is dismissed.

January 13, 2015
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(G.S.SANDHAWALIA)
Judge