

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

CR No.770 of 2003 (O&M)

Date of Decision: 22.09.2015

M/s Janta Egg. Store

..... Petitioner

Versus

M/s Agro Corpex India Ltd.

..... Respondent

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. P.S. Khurana, Advocate
for the petitioner.

None for the respondent.

AMIT RAWAL, J. (ORAL)

Challenge in the present petition is to the impugned order dated 20.08.2002, whereby, the application filed by the petitioners-defendant, under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the Limitation Act), seeking condonation of delay in filing the appeal, has been dismissed.

Mr. P.S. Khurana, Advocate, appearing on behalf of the petitioner-defendants submits that as petitioner is resident of Jammu and Kashmir and as such the decision in the civil suit could not be conveyed to him, therefore, the delay has occurred.

There is no representation on behalf of the respondent.

The trial Court has dismissed the appeal on the ground that the

petitioner-defendant is not able to give plausible explanation in seeking condonation of delay. I am of the view, the litigant should not be allowed to suffer for fault of his counsel as has been held by the Hon'ble Supreme Court in ***Rafiz and another Vs. Munshilal and another, AIR 1981 SC 1400.***

The Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 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.”

The present case falls within the parameters of the above principles laid down by the Hon'ble Apex Court.

Since petitioner has been deprived from addressing issue on merits of the matter, I am of the view, a miscarriage of justice, has been caused as the parties could not be made to suffer for the lapse under part of the counsel. The impugned order is, accordingly, set aside and the delay of 54 days in filing the appeal is condoned and the appeal is remitted back to the Lower Appellate Court to decide the appeal afresh, on merits and the appeal is restored to its original number.

Civil revision petition is allowed.

22.09.2015

Bhumika

**(AMIT RAWAL)
JUDGE**