

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

**FAO No.2960 of 2013 (O&M)
Date of Decision: 28.07.2015**

Ramesh Dutt

.....Appellant

Versus

Deepak Saini alias Beera and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present:- Mr. Sanjay Dhiman, Advocate,
for applicant-appellant.

Mr. R.N.Singhal, Advocate,
for respondent No.3-Insurance Company.

SHEKHER DHAWAN, J

CM Nos.13326-CII of 2013

Prayer has been made in the application for condonation of delay of 502 days in filing the appeal on the ground that after receipt of summon of the execution petition filed by respondent-Insurance Company, applicant came to know. As such applicant could not file the appeal earlier due to the aforesaid reason and the delay of 502 days be condoned.

Application is supported by affidavit. Learned counsel for applicant-appellant also placed reliance on judgment from Hon'ble Supreme Court in case **Improvement Trust, Ludhiana Vs. Ujagar Singh and others 2010(2) SCC (Civil) 798** wherein Hon'ble Supreme Court observed that '*Unless mala fides are writ large on conduct of the party, generally as*

a normal rule delay should be condoned. Attempt should be made to allow the matter to be contested on merit rather than disposing it of on technicalities at the threshold'.

In reply, respondent-Insurance Company took the plea that application for condonation of delay is without any merit as there are no grounds for the same. Even the averments of application are wrong. The delay of 502 days in filing the appeal is intentional and unexplained and deliberate and the appeal is afterthought when a valuable right has already accrued to the answering respondent-Insurance Company. Reply is also supported by affidavit.

Having considered the rival submissions made by learned counsel for the parties and the grounds taken in the application as well as reply to the application, this Court is of the considered view that the award dated 23.05.2011 was pronounced by 'The Tribunal' in the presence of applicant-appellant who is driver and owner of the offending truck. As such application cannot take the plea that he was not aware about passing of the award on 23.05.2011 as the award as well as all the remaining pleadings were in the knowledge of applicant, owner. The claim petition was contested by respondents No.1 and 2 by filing of written statement.

More so, the delay in this case is of 502 days and there are no grounds for condoning such a delay. The facts of the case in hand are distinguishable mainly on two accounts. Firstly, the applicant was having knowledge about the pendency of the claim petition before 'The Tribunal' and passing of award by 'The Tribunal'. Thereafter the delay is inordinate and there is no valid explanation to that effect. The facts of the case are distinguishable from facts of case titled in **Improvement Trust, Ludhiana**

Vs. Ujagar singh and others (supra). Rather *each case has to be considered on its own facts and circumstances while dealing with condonation of delay.* Applying the same principles to the present facts of case, there are no grounds for condonation of delay of 502 days in filing the appeal and application stands dismissed.

CM Nos.13327-CII of 2013

In view of the above, present application for condonation of delay of 61 days in re-filing the appeal stands dismissed.

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In view of the order passed in applications bearing No.CM Nos.13326-27-CII of 2013, FAO stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

July 28, 2015
msd