

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP No.211 of 2014

Date of decision: 24.03.2015

M/s Ghasi Ram Panna Lal

....Appellant

Versus

State of Haryana & another

.....Respondents

VATAP No.230 of 2014

M/s Ghasi Ram Panna Lal

....Appellant

Versus

State of Haryana & another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Sandeep Goyal, Advocate, for the appellant.

Ms.Mamta Singla Talwar, AAG, Haryana.

G.S.Sandhawalia J.

This judgment shall dispose of VATAP Nos.211 & 230 of 2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from VATAP No.211 of 2014 titled *M/s Ghasi Ram Panna Lal Vs. State of Haryana & another*.

Challenge in the present appeal is to the order dated 06.05.2014 (Annexure A7), passed by the Haryana Tax Tribunal, Chandigarh (for short, the 'Tribunal'), whereby it has failed to exercise its jurisdiction and declined to interfere in the Appellate Order dated 21.10.2013 (Annexure A5) vide which the Joint Excise & Taxation Commissioner (Appeals) Faridabad (for short, the

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dated 29.03.2011 (Anneuxre A2) being time barred by 761 days, as per the case of the respondents. Similarly, the second appeal filed against the order of penalty, was also dismissed, being time barred by 250 days, as per the case of the respondents. Appeal No.230 of 2014 pertains to the case of penalty, imposed under Section 38 of the Haryana General Sales Tax Act, 1973, vide order dated 13.08.2012 and the appeal against the same was also dismissed on the same ground.

The facts of the case would go on to show that the assessment was made on 29.03.2011 in the case of the appellant, who is a proprietary concern and a dealer, trading in iron & steel, cement & white cement and ACC sheets. Since no appeal was filed against the assessment order, the respondent-authorities imposed a penalty of ₹36,26,530/- on 13.08.2012. An appeal was filed before the JETC along with an application for condonation of delay against the order dated 29.03.2011 and the plea taken was that the date of communication of the order was 25.06.2011. The ground for condonation of delay was that the daughter of the appellant, who had been married in February, 2011, in Baliya District in Uttar Pradesh, had been diagnosed with blood clot cancer disease few months after the marriage and had to be brought back to Gurgaon for medical treatment. She had remained hospitalised in Gurgaon for a long period and was also treated as outdoor patient after series of clinical tests. The family had remained occupied for a period of 2 years for getting her treated and thus, a sufficient case was sought to be made out on that ground. The medical file was to be produced during the hearing.

The JETC dismissed the appeal on the ground that there was no sufficient ground or logical explanation shown why the appeal had not been filed within the specified period of limitation. The gross turn-over of the appellant-

showed that the appellant was very active in his business and could not take shelter of the so-called illness of his married daughter. Further justification was sought to be given in the order by holding that the daughter was not divorced and the in-laws had the responsibility and therefore, it was only a lame excuse and the JETC declined to condone the delay, vide order dated 21.10.2013 (Annexure A5).

The appellant took the case to the Tribunal, which has further dismissed the appeal vide the impugned order dated 06.05.2014 (Annexure A7) by recording a finding that the appellant had not bothered about the filing of the appeal and he had no intention of doing the same and noticed that the limitation period was of 60 days from the date of communication and though under Section 5 of the Limitation Act, 1963, the Courts had power, in the totality of the events, did not interfere.

The appellant has, thus, raised the following question of law:

“Whether on the facts and in the circumstances of the case the Ld. Tribunal was justified in not condoning the delay wherein there exists a sufficient cause for the same?”

In addition to the above question of law, the issue of perversity also arises in the present case as there is no denying the fact that the appellant has placed sufficient material on record before this Court in the form of medical treatment file of his daughter, Ms.Ritika Singla, aged around 26 years. The treatment started in the month of June, 2011 and the MRI report was prepared at Bangalore. Other materials have also been placed on record to show that she had been treated in various hospitals at New Delhi, including Sir Ganga Ram Hospital, Dr.Doda's Diagnostics & Healthcare and Medanta Hospital at Gurgaon. A perusal of the said record would go on to show that the patient was suffering from complication of blood flow in the femoral veins which had got compressed.

The said fact was never specifically denied or controverted in any manner by the

conclusion that the certificates issued were incorrect and were only created for making out a sufficient cause. The illness was also of the period after the order was passed in March, 2011 and allegedly communicated in June, 2011.

Merely because the appellant was a dealer in cement, steel and ACC sheets and that his business kept on flourishing during this period would not be a ground to hold that the delay was not to be condoned. The reasoning to deny the benefit of condonation of the delay caused cannot be held to be justified in the facts and circumstances of the case. The Apex Court in **Collector, Land Acquisition, Anantnag Vs. Mst. Katiji (1987) 2 SCC 107** and **G.Ramegowda, Major Vs. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142**, has held that each and every days' delay is not to be explained and that the word 'sufficient cause' is an elastic term and if the explanation offered is not concocted, the case should be decided on merits as substantial justice is the paramount consideration.

Reference can also be made to the principles laid down by the Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others 2013 (12) SCC 649**, which 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.”

In the present case, the application was very specific and the delay was sought to be condoned on the ground of illness of his married daughter who had been treated at various hospitals all over the country and had been suffering from blood clot cancer disease.

In such circumstances, we are of the opinion that the question of law framed above is liable to be answered in favour of the appellant that the Tribunal was not justified in not allowing the application for condonation of delay and the reasoning given to dismiss the appeal, suffered from perversity. Resultantly, the order dated 06.05.2014 (Annexure A7), passed by the Tribunal, is set aside and the application for condonation of delay, filed before the JECT is accepted on account of sufficient cause having been shown. Resultantly, the JECT shall hear both the appeals on merits.

Both the appeals are allowed in the abovestated terms.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

24.03.2015
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