

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

CR No.2303 of 2013 (O&M)

Date of decision:20.10.2016

State of Haryana and othersPetitioners

VERSUS

Shamsher SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sheoran, Additional A.G. Haryana for the
petitioners.

Mr. Pankaj Jain, Advocate for the respondent.

REKHA MITTAL, J.

The present petition has been directed against order dated 23.11.2012 passed by the District Judge, Gurgaon whereby application filed by the petitioner for condonation of delay of 48 days in filing the appeal has been dismissed.

Shamsher Singh- respondent filed a suit for declaration and consequential relief of permanent injunction by challenging order dated 30.10.2006 passed by the Director General of Police, Haryana, demoting his rank. The suit was decreed by the trial Court vide judgment and decree dated 30.04.2012. The appeal was preferred by the petitioner to assail the judgment and decree passed by the trial Court with an application seeking condonation of delay of 48 days.

The Court of appeal framed issues on the basis of pleadings, permitted the parties to adduce evidence and decided issue No.1 against the petitioners and as a consequence, the application for condonation of delay was ordered to be dismissed.

Counsel for the petitioner would urge that opinion from the office of Legal Remembrancer, Haryana was received on 20.06.2012 and at that time, the Courts were closed for civil work. The Courts re-opened on 16.07.2012 and within few days thereafter, the appeal was preferred. It is vehemently argued that in view of the facts brought on record coupled with well settled principle in law that the Court should adopt a liberal approach for condoning delay so that the parties should get complete and effective opportunity to be heard on merits of the case, findings recorded by the Court of appeal on issue No.1 cannot be allowed to sustain and liable to be set aside. It is further argued that the Court of appeal relied upon judgment of Hon'ble the Supreme Court of India **Office of Chief Post Master General and others Vs. Living Media India Ltd and another, 2012 (2) CCC 001 (S.C.)**, wherein there was enormous and inordinate delay of 427 days in filing the appeal and the Court in para 13 of the judgment has held that there is no need to accept the usual explanation that the file was kept for several months/years due to considerable degree for procedural red-tape in the process. It is argued that in view of the materials on record and the period of delay (48 days), the aforesaid judgment cannot enure to benefit of the respondent.

Counsel for the respondent, on the contrary, has supported the impugned order.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

Hon'ble the Supreme Court of India in **Office of the Chief Post Master General and others' case** (supra) has made reference to various judgments passed by the Apex Court from time to time. In **G. Ramegowda Vs. Special Land Acquisition Officer, (1988) 2 SCC 142,**

the Court held that the expression “sufficient cause” in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice where no gross negligence or deliberate inaction or lack of bona fide is imputable to the party seeking condonation of delay.

In **State of Haryana Vs. Chandra Mani, (1996) 3 SCC 132**, it has been laid down as follows:-

“when the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note- making, file- pushing and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand but more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default, no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice- oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.”

A relevant extract from **Union of India Vs. Manager, Jain and Associates, 2001(2) RCR (Civil) 119**, says that delay ought to be condoned when sufficiently explained particularly where party seeking condonation is the Government. It is further submitted that the Hon'ble High Court ought to have condoned the delay in considering the public revenue involved and also because of the genuine difficulties and circumstances beyond the control of the petitioner, on account of which Special Leave Petition could not be filed within time.

There cannot be any dispute about the settled position in law that the Court should not adopt a pedantic approach rather should take a liberal and reasonable view in condoning delay if the same is sufficiently explained. In the case at hand, there is delay of 48 days. The file remained pending with the office of Legal Remembrancer, Haryana till middle of June, 2012. No doubt, the Courts were open for taking up urgent cases during vacation but the present case did not involve any such urgency requiring filing of an appeal when the Courts were closed for civil work.

When the facts and circumstances of the present case are examined in the light of judgments quoted hereinbefore, it can be safely concluded that the Court of appeal adopted a very stringent and strict view of the matter in dismissing plea of the petitioners for condoning delay of 48 days in filing the appeal. That being so, the impugned order cannot be allowed to sustain and accordingly set aside. As a natural corollary, the application for condonation of delay is allowed and delay of 48 days is condoned.

For the foregoing reasons, the petition is allowed, the appeal is restored to the board of District Judge, Gurgaon for disposal in accordance with law. The parties through their counsel are directed to appear before the District Judge, Gurgaon on 29.11.2016. As the appeal filed in the year 2012 has been restored, the Court is directed to dispose of the same within a period of two months from the parties putting in appearance.

OCTOBER 20, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

yes/no
yes/no