

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

**Civil Revision No.2598 of 2016 (O&M)
Date of decision : 09.08.2016**

Dr. Tarun Bhardwaj

.....Petitioner

Versus

Kusum Lata

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Hemender Goswami, Advocate for petitioner.

DARSHAN SINGH, J.

CM-13240-CII-2016

This is an application for placing on record documents
Annexure P-4 to Annexure P-6.

Heard.

In view of the reasons mentioned in the application, same is
allowed and the documents Annexure P-4 to Annexure P-6 are taken on
record, subject to just exceptions.

CR-2598-2016

The present revision petition has been preferred against the
order dated 16.12.2015 passed by learned Additional District Judge,
Kurukshetra, vide which the application moved by the petitioner under
Section 5 of the Limitation Act for condonation of delay in filing the appeal

has been dismissed and resultantly the appeal has been dismissed being time barred.

2. Learned counsel for the petitioner contended that there was delay of about six and half months in filing the appeal. He contended that the appellant could not file the appeal due to illness of his wife. The wife of the petitioner was undergoing treatment in Alchemist Hospital, Panchkula and various other hospitals. She was also placed under suspension on 31.10.2014. This incident further compounded his problem. Due to this problem, he remained disturbed and could not approach his counsel for preparing and filing the appeal.

3. Learned counsel for the petitioner further contended that as per the law, liberal approach should be adopted to condone the delay as the right of appeal should always be available to the litigant to get his rights determined on merits than on technicalities. To support his contentions, learned counsel for the petitioner placed reliance upon cases ***Kanwar Lal Vs. State of Haryana and another 2003 (1) RCR (Civil) 345, Smt. Bimla & Anr. Vs. Mahender & Ors. CR No.5670 of 2014 (O&M) decided on 8.12.2015, Swaran Singh Vs. Raghubir Singh and others CR No.6301 of 2015 decided on 19.01.2016, Jai Chand Vs. Prem Chand and another CR No.4417 of 2013 decided on 27.11.2015 and Pritam Kaur Vs. Thandu Ram @ Thandu Singh and others CR No.4473 of 2012 decided on 30.11.2015.***

4. I have duly considered the aforesaid contentions.

5. Respondent Kusum Lata has filed the suit for recovery of

Rs.2,20,000/- against the petitioner on account of arrears of rent with respect to one double story shop owned by her in which the petitioner was a tenant. Respondent Kusum Lata has filed the eviction petition, which was allowed vide judgment dated 05.05.2011. The petitioner preferred appeal against the said judgment. The learned Appellate Authority stayed the operation of the eviction order and directed the petitioner to deposit the arrears of rent but the petitioner withdraw the said appeal on 03.02.2012 and did not pay the amount of rent. Hence, the respondent has to file the suit for recovery of the arrears of rent. The suit filed by respondent for recovery was decreed by the learned trial Court vide judgment dated 26.08.2014. The appellant has preferred the appeal on 10.04.2015. In the application filed by the petitioner for condonation of delay it is alleged that the delay in filing the appeal has occurred as his wife was ill. She was receiving treatment from various hospitals later on his wife was suspended on 31.10.2014. She was working as Medical Officer in LNJP Hospital, Kurukshetra and due to this reason, he remained disturbed. He could not approach his counsel for preparing the appeal and filing the same.

6. There is no dispute with the proposition of law that the liberal approach is required to be adopted for condonation of delay in filing the appeal. But at the same time, the expression sufficient cause deserves to be liberally interpreted only in the cases where the stand of the appellant is found to be honest and *bona fide*. The law of limitation may harshly affect a party but it has to be applied with all its rigor when the statute so prescribes. The Court has no power to extend the period of limitation on equitable

grounds. In case ***Basawaraj and another Vs. Special Land Acquisition Officer 2014(1) RCR (Civil) 603***, the Hon'ble Supreme Court has laid down as under:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.”

7. The statute of limitation is founded on public policy. Its aim is to secure peace in the community. An unlimited limitation would lead to sense of insecurity and uncertainty.

8. The Hon'ble Apex Court in case ***Basawaraj and another Vs. Special Land Acquisition Officer*** (supra), while dealing with the scope of “sufficient cause” has laid down as under:-

“9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that

*the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: **Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.**, AIR 1964 SC 1336; **Lala Matadin v. A. Narayanan**, AIR 1970 SC 1953; **Parimal v. Veena @ Bharti** AIR 2011 SC 1150; and **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai** AIR 2012 SC 1629.)"*

9. As per the ratio of law laid down by the Hon'ble Apex Court in this authority, sufficient cause is the cause for which the party concerned could not be blamed and that party should not have acted in negligent manner or there was a want of bona fide on his part. The Court has to examine whether the mistake is bona fide or was merely a devise to cover an ulterior purpose.

10. In case **Balwant Singh (dead) Vs. Jagdish Singh and others 2010(3) RCR (Civil) 856**, the Hon'ble Apex Court has held the expression sufficient cause should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant. In case **A.C. Govindaraj and others Vs. M. Krishnamoorthy and others 2015(3) RCR (Civil) 366**, again the Hon'ble Apex Court reiterated the legal position that when there is no negligence, inaction or want of bona fide imputable to the appellants, the delay should be

condoned. The true test is to see whether the applicant has acted with due diligence. In case *Amalendu Kumar Bera and others Vs. The State of West Bengal 2013(2) RCR (Civil) 534*, the Hon'ble Apex Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned. In case of serious negligence, the delay should not be condoned. The Hon'ble Apex Court in case *Tribhuvanshankar Vs. Amrutlal, 2014(1) RCR (Civil) 206*, has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

11. In the instant case there is long delay of about six and half months in filing the appeal. The plea taken by the appellant that the delay has occurred as his wife was ill is not substantiated from any evidence. Along with CM No.13240-CII-2016, the petitioner has placed on record Annexure-P4 to Annexure-P6. These documents relates to the treatment of the wife of petitioner. Annexure-P4 is the report dated 12.08.2014 with respect to certain tests. The suit has been decided on 26.08.2014. Learned counsel for the petitioner could not point out any document with respect to the treatment of the wife of the petitioner after 26.08.2014 *i.e.* the date of decision of the suit. Mere this fact that the wife of the petitioner was placed under suspension is also not such a ground that the petitioner was unable to contact his counsel to file the appeal.

12. The conduct of the petitioner also does not seems to be *bona fide*. The petitioner was a tenant in the premises owned by respondent

Kusum Lata. She has filed the eviction petition which was allowed. The petitioner was in arrears of rent which were not paid during the pendency of the rent petition. So, the respondent had to file the suit for recovery against the petitioner which was decreed on 26.08.2014. It is further evident from the copy of the judgment dated 26.08.2014 available on record as Annexure-P2 that the petitioner has preferred the appeal against eviction order. The learned Appellate Authority has stayed the eviction order but directed the petitioner to pay the arrears of rent, but instead of paying the rent he withdraw the appeal. It shows that the petitioner has tried to evade the payment of the arrears of rent and certainly he was interested in delay tactics. Thus, the delay in filing the present appeal cannot be stated to be *bona fide* rather the same appears to be deliberate and intentional in order to obstruct the execution of the decree dated 26.08.2014.

13. The learned First Appellate Court has appreciated the factual and legal position in a correct prospective by passing the well reasoned order and had returned a positive finding that the grounds set up by the petitioner for condonation of delay are neither sufficient nor convincing. The application for seeking condonation of delay having been filed on various grounds smacks of *mala fide*.

14. I have no reason to differ with the aforesaid findings arrived at by the learned First Appellate Court. So, the application for condonation of delay was rightly dismissed by the learned First Appellate Court in the absence of proof of the sufficient cause.

15. Consequently, the present revision petition is without any

merit and the same is hereby dismissed.

09.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No