

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

CR No.2683 of 2016(O&M)

Date of decision:3.5.2016

Tek Chand @ Teka Ram

....Petitioner

VERSUS

Roshini and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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. Krishan Kumar Thakur, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to order dated 08.02.2016 (Annexure P-4) passed by the Additional District Judge-I, Fatehabad dismissing application of the petitioner for condonation of delay in filing the appeal.

Roshini wife of Jagdish Chander, respondent No.1, filed a suit for possession in regard to suit land on the plea that land has been illegally encroached upon by Dhoop Singh @ Dhupa Ram and others sons of Mori Ram. The defendants including the present petitioner raised the plea that their possession over the suit land is open, peaceful, uninterrupted for the past 30 years which measures 80 feet in south, 55 feet in east, 62 feet in south west corner and in the east lies agricultural land of Dhupa Ram and they have become owner of the suit land by way of adverse possession. The suit filed by Roshini was decreed by the learned trial Court vide judgment and decree dated 10.04.2015.

Tek Chand @ Teka Ram one of the defendants filed the appeal against the judgment and decree passed by the trial Court wherein his co-defendants namely Dhoop Singh @ Dhupa Ram and Roop Chand were arrayed as performa respondents. Along with the appeal, an application was filed for condoning delay of 150 days in filing the appeal that came to be dismissed by the first Appellate Court.

The petitioner prayed for condonation of delay primarily on two counts namely that his counsel failed to send intimation regarding decision of the case and he was suffering from heart disease and under treatment in Saini Nursing Home, Tohana. It has been pleaded that the delay in filing the appeal was not intentional, willful and deliberate but was due to lack of knowledge of passing of the judgment in appeal.

The first Appellate Court, on a detailed consideration of both the grounds raised in the application in the light of various judgments referred to in the impugned order refused to accept the application with the observations that explanation given by the applicant is concocted and he had been negligent in prosecuting his cause, therefore, delay cannot be condoned.

Counsel for the petitioner has submitted that technicalities or procedural delays cannot be allowed to stand in the way of substantial justice, therefore, even if the petitioner was found to be lacking in care and diligence in prosecuting his remedy, delay is liable to be condoned, particularly in the circumstances that the contesting party can be compensated with costs. Another submission made by counsel is that while dealing with an application for condonation of delay, the Court is required to adopt a liberal and pragmatic approach and not a pedantic one.

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

Before advertng to the merits of the impugned order, it is appropriate to note that there is no quarrel with the settled position in law that the Court is required to adopt a justifiable liberal approach to do substantial justice to the parties while deciding an application for condonation of delay. However, in Ramlal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361, it has been held that even if sufficient cause has been shown, parties are not entitled to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the court by Section 5 of the Limitation Act. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground only. If sufficient cause has been shown then the Court has to enquire whether in its discretion, it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

Reverting to the case in hand, the petitioner has made two-fold submissions to prove sufficient case i.e. that counsel did not inform about decision of the suit and the petitioner was suffering from some heart ailment. If plea of the petitioner that his counsel failed to inform about decision of the suit is taken as a sufficient ground, there may not be even a single case where an application for condonation of delay can be dismissed

because such a plea can be raised by each and every litigant with impunity. The Court below has rejected this plea in view of its observations recorded in para 5 of the impugned order. It has been held that conduct of counsel for the applicant before the trial Court was above board and it cannot be accepted that he was negligent and did not intimate the applicant regarding decision of the suit. Further held that it was not the duty of a counsel to inform his client about the status and fate of the case rather it is the duty of a litigant to contact his counsel to know about the fate of his case. The Court has also made reference to judgment of this Court Paraminder Kaur @ Pammi Vs. Darshan Singh, 2011 (2) Law Herald (P&H) 986. The Court relied upon judgment of this Court Baldev Singh Vs. Smt. Binder and others, 2010(3) Law Herald (P&H) 1977 wherein it has been that it has become a practice to level allegations against counsel for their own negligence so as to avail benefit of condonation of delay in view of law that a party should not suffer for fault of the counsel.

It has further been held that in these times, with highly sophisticated means of communication, it cannot be believed that till 03.10.2015, the applicant made no efforts to contact his counsel and as such the Court is not convinced with the grounds raised in the application.

With regard to plea of illness of the petitioner, the Court has noticed that the medical record produced by the applicant pertains to the year 2013 and 2014, OPD slips of Saini Nursing Home bear the dates 23.04.2015, 13.04.2015 and 08.04.2015. Even if these are accepted at their face value, it cannot be believed that applicant remained unwell till 03.10.2015.

Counsel for the petitioner is not in a position to point out that the findings recorded by the Court below are either based on misreading of the materials placed in support of the application or the same are baseless. One thing more to be added here is that the respondent/plaintiff filed suit against three brothers including the present petitioner. The other two have not chosen to prefer an appeal, may be, they are satisfied with the judgment and decree passed by the trial Court. Another reason for them not to file the appeal can be that they have no reason to explain the delay in preferring the appeal. In view of the observations made by the Appellate Court, it is difficult to accept contention of the petitioner that the petitioner has either been able to prove a sufficient cause for condonation of delay or the case invites further consideration in view of judgment in Ram Lal and others' case (supra).

In view of the above, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. No order as to costs.

MAY 3, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE