

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

CR No.3328 of 2016

Date of decision :18.05.2016

Surja Ram

..... Petitioner

Versus

Indra Devi and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Parvesh Sachdeva, Advocate
for the petitioner.

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

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the judgment and decree dated 04.12.2013 passed by the learned Civil Judge (Junior Division), Fazilka and the order dated 07.10.2015 passed by the learned First Appellate Court, vide which the appeal filed by the petitioner has been dismissed only on the ground of limitation.

2. Respondents-plaintiffs have filed the suit for grant of maintenance allowance at the rate of Rs.50,000/- per annum and for creating the charge on the immovable property

belonging to the respondents. Respondent no.1 is the widowed daughter-in-law of the petitioner and respondent no.2 is his minor grandson. The said suit filed by the respondent was decreed ex parte by the learned trial Court vide impugned judgment and decree dated 04.12.2013. The petitioner-defendant was directed to pay maintenance to respondent no.1 at the rate of Rs.1000/- per month and Rs. 500/- per month to respondent no.2.

3. The petitioner preferred appeal against the said judgment and decree dated 04.012.2013. His appeal has been dismissed by the learned First Appellate Court on the ground of limitation. Hence this revision petition.

4. I have heard Mr. Parvesh Sachdeva, Advocate, learned counsel for the petitioner and have meticulously gone through the paper book.

5. Initiating the arguments, learned counsel for the petitioner-defendant contended that there was seven months delay in filing the appeal. He contended that the petitioner-defendant is an old man. He has engaged the counsel. Said counsel did not appear in the trial Court and when he made the inquiry about the case, it was disclosed that the suit has already been decreed against him. Thus, he contended that there was no deliberate or intentional delay on his part in filing the appeal and there are sufficient grounds to condone the delay and the petitioner-defendant should have been

granted the opportunity to contest the appeal on merits.

6. I have duly considered the aforesaid contentions.

7. As already mentioned, Smt. Indra Devi, the widow of Om Parkash, the daughter-in-law of the petitioner and his minor grandson have filed the suit for grant of maintenance under the provisions of the Hindu Adoption and Maintenance Act, 1956 (for short Act) as they had no means for their livelihood and were living at the mercy of the father of respondent no.1. Whereas, petitioner was the man of means having movable and immovable property. The said suit was decreed by the learned trial Court by granting meagre maintenance allowance i.e. Rs.1000/- per month to respondent no.1 and Rs. 500/- per month to respondent no.1, vide judgment and decree dated 04.12.2013. The appeal was presented before the learned First Appellate Court on 17.07.2014. So, there was delay of about six and half months in filing the present appeal.

8. The petitioner has moved an application under Section 5 of the Limitation Act for seeking condonation of delay before the learned First Appellate Court. The ground taken in the application for condonation of delay is that he came to know regarding the impugned judgment and decree on 05.07.2014, when he inquired of the said fact from the clerk of his Advocate. This is the only reason pleaded in the application for condonation of delay. Learned counsel for the

petitioner has also attributed the entire fault to the counsel for the petitioner representing him in the trial Court.

9. There is no dispute with the proposition of law that there should be liberal approach to condone the delay and expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done. But, this proposition is applicable only in those cases, where negligence, inaction or lack of *bona fide* cannot be imputed to the party concerned. The law of limitation has to be applied with all its rigour when the statute prescribes a particular period of limitation. It may harshly affect a particular party. Learned counsel for the petitioner has pleaded that petitioner is an old man of 80 years. But, the delay in filing the appeal cannot be condoned simply on the ground of equity in the absence of any “sufficient cause”. 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.”

10. 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.

11. 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.)”

12. 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.

13. 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.

14. The background of the case shows that the petitioner-plaintiff was totally negligent in defending the suit. Even, in the main suit, he absented from the proceedings of the case and even the written statement was not filed and was proceeded against ex parte vide order dated 13.12.2012. The ex parte decree has been passed against him for grant of maintenance in favour of respondents no.1 and 2. In these circumstances, he cannot alleged that his counsel could not inform him about the proceedings and he only came to know only on 05.07.2014, when he made inquiry from his counsel. It is very easy to put the blame on the counsel representing the party to make out a case to seek the relief. It does not appeal to the reasons that right from 13.12.2012 till the date of decision i.e. 04.12.2013 i.e. for a period of about one year the petitioner would not have contacted his counsel to know fate of the case. Thus, there is no escape from the conclusion that the plea put-forward by the petitioner to show 'sufficient

cause' for condonation of long delay of about six and half months in filing the appeal is based on concoction. It is not mentioned in the application as to what prompted the petitioner to make the inquiry from the clerk of his counsel on 05.07.2014 about the result of the case. Thus, on the face of it, the plea raised in the application for condonation of delay does not inspire any confidence.

15. Consequently, the petitioner has not been able to establish the 'sufficient cause' for condonation of delay in filing the appeal before the learned First Appellate Court.

16. Thus, I do not find any illegality in the impugned order dated 07.10.2015 passed by the learned First Appellate Court.

17. Therefore, the present revision petition having no merits, is hereby dismissed.

18.05.2016

S.khan

**(DARSHAN SINGH)
JUDGE**