

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.36 of 2016

Date of Decision: 4.4.2016

Santosh Kumari

---Petitioner

versus

Chameli Devi and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ravi Kamal Gupta, Advocate
for the petitioner**

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

Rekha Mittal, J.

The present petition has been directed against order dated 21.8.2015 passed by the Additional District Judge, Sangrur whereby application filed by the petitioner under Section 5 of the Limitation Act, 1963 (for short “the Limitation Act”) for condonation of delay has been dismissed and as a result, the appeal preferred against the judgment and decree dated 4.3.2010 passed by the Civil Judge (Junior Division), Dhuri has been dismissed.

Smt. Santosh Kumari filed a suit against her brother and other family members to claim her share in the suit property on the basis of inheritance to the estate left behind by her parents namely Kaur Singh and Shanti Devi. The suit was dismissed by the learned trial court on 4.3.2010

and the appeal against the decree passed by the trial court was preferred in July 2013. Alongwith the appeal, an application under Section 5 of the Limitation Act was filed for condonation of delay on the plea that the applicant is a resident of Kurukshetra, has been suffering from serious ailment for the past more than 15 years, was not able to make visits to the court due to her ailment and counsel for the applicant had assured that he would watch interest of the appellant and inform her about decision of the suit as and when decided. It is further averred that she had not been attending the proceedings of the suit personally except for making her statement in the court. Counsel for the applicant did not inform her about decision of the suit. It was only on 10.7.2013, she came to the court at Dhuri, enquired about status of the suit from her counsel Sh. Sanjiv Chaudhary, Advocate and came to know that suit had been dismissed on 4.3.2010 and counsel further told her that he had informed about the decision telephonically but she had not received any such telephone call.

The respondents/defendants filed their reply controverting the allegations on the basis whereof petitioner sought indulgence of the court for condonation of delay of more than three years with a prayer for dismissal of the application.

The court in appeal framed issues, permitted the parties to adduce evidence and eventually decided Issue No.1 against the applicant in view of its observations recorded in paras 11 and 12 of the impugned order and as a result, the application was dismissed and consequently the appeal was dismissed being barred by limitation.

Counsel for the petitioner has submitted that while deciding an

application for condonation of delay, the Court is required to adopt a justifiably liberal approach to do substantial justice to the parties while disposing of matters on merits. In support of his contention, he has referred to judgments of the Hon'ble Supreme Court of India **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others 1987(2) SCC 107, Ramlal and others vs. Rewa Coalfields Limited 1962 AIR (SC)361, Vedabai @ Vijayanatabai Baburao Patil vs. Shantaram Baburao Patil 2001(3)R.C.R.(Civil) 831, Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others 2013(4) R.C.R.(Civil) 785**. It has further been argued that taking into consideration the principles laid down in **Collector, Land Acquisition, Anantnag and another's case (supra)** and **Esha Bhattacharjee's case (supra)**, delay of three years in filing the appeal should not be allowed to stand in the way of the petitioner to be heard on merits of the appeal that is likely to succeed.

I have heard counsel for the petitioner, perused the impugned order and the judgments cited at bar.

Before advertng to the merits of the allegations set up in the application, it is appropriate to note that there is no quarrel with the settled position in law that the Court has to take a pragmatic view while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice. In **Ramlal and others' case (supra)**, 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 alone. 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.

Turning to the case in hand, plea of the applicant is that as she was suffering from some medical condition and could not appear in the trial court except for recording her statement as a witness and her counsel Sh. Sanjiv Chaudhary, Advocate did not inform her about decision of the case, delay of more than three years in filing the appeal is due to circumstances beyond her control and thus liable to be condoned. The plea of the applicant in regard to the aforesaid facts gets falsified and belied in the light of facts elicited during her cross examination conducted on 15.9.2014. She has admitted that she is in a position to travel alone from Kurukshetra to Dhuri and she had been appearing in Dhuri Court on the fixed dates. She used to visit Dhuri by train for appearing in the Court. She had been talking to Sh. Sanjiv Chaudhary, Advocate through telephone. The mobile number of Sh. Sanjiv Chaudhary, Advocate was available with her and she had been talking to him from time to time. No documentary evidence was produced before the court to substantiate plea of the applicant that she

remained sick or is unable to pursue the proceedings personally. She has stated that she had undergone some operation of her food pipe about 15-16 years back and remained hospitalized for about one month. The plea of the petitioner that she did not appear in the Court at Dhuri except on the date of recording of her evidence gets falsified from cross examination. The petitioner has miserably failed to prove that there is sufficient cause for condoning delay of more than three years in filing the appeal.

When the facts and circumstances of the present case are examined in the light of ratio laid down in the judgments referred to by counsel for the petitioner, I do not find any error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed with no order as to costs.

(Rekha Mittal)
Judge

7.4.2016

PARAMJIT