

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

**CR No.4802 of 2016 (O&M)
Decided on: 28.07.2016**

State of Punjab through its Secretary, Housing and Urban Development,
Punjab and others

....Petitioners

Versus

Nirmal Bala

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. B.S. Sra, Addl. A.G., Punjab
for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against order dated 01.02.2016 passed by the Additional District Judge, Ferozepur whereby application filed by the petitioner for condoning delay of more than 04 years in filing Civil Appeal No.08/01.02.2016 captioned '*State of Punjab and another vs Smt. Nirmal Bala*' to assail the judgment and decree dated 05.02.2010 passed by the trial Court has been dismissed and consequent thereof, the main appeal has also been dismissed.

Counsel for the petitioners has submitted that technicalities of procedure should not be allowed to stand in the way of substantial justice, therefore, the Court is required to adopt a lenient approach while deciding an application for condonation of delay in an endeavor to decide contesting claims of the parties on merits instead of throwing them overboard at the threshold. Further dilating, it is argued that as the process for taking a final decision to prefer an appeal took longer time, the Court below should have condoned delay in filing the appeal.

I have heard counsel for the petitioners and perused the paperbook particularly the order impugned.

Indisputably, Hon'ble the Supreme Court of India in ***“Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others”***, (2013) 12 SCC 649 has held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice. On the other hand, Hon'ble the Apex Court in ***“Ramlal and others vs. Rewa Coalfields Limited”***, AIR 1962 SC 361, has 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.

The Court of appeal, on a detailed consideration of the relevant aspects in the light of judgments referred to in para 5 of the

impugned order came to conclude that the law of limitation binds everybody including the Government Department. Where the department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay, the appeal should be dismissed on the point of delay. It has further been held that act of the appellant is just to harass the respondent/plaintiff and nothing else. The appellants have failed to seek protection of Section 5 of the Limitation Act, 1963 as they failed to prove that delay was beyond their control or *bona fide*.

Counsel for the petitioners has not made any submissions to challenge correctness of findings recorded by the Court of appeal. In ***“Office of the Chief Post Master General and others vs Living Media India Limited and another”***, 2012(2) RSJ 308 it was held by the Apex Court that plea for condonation of delay on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. When the instant case is examined in the light of various judgments relied upon by the Court below, I do not find any error much less illegality in the impugned order warranting intervention. I would hasten to add that despite having failed in the appeal on the ground of delay, the present petition was also filed after a delay of 72 days. In view of the above, sweeping contentions raised by counsel for the petitioners are not sufficient to uphold plea of the petitioners.

In view of what has been discussed hereinabove, finding

no merit, the petition fails and is accordingly dismissed *in limine*. As the petition has been decided on merit, application for condoning delay of 72 days is of academic relevance only.

28.07.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No