

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 570 of 2016

Date of Decision: 19.05.2016

Kamal Alang and Others

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Gursimran Singh, Advocate
for the petitioner(s).

Mr. B.S.Sra, Additional Advocate General,
Punjab for the respondent(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 13.10.2015, passed by Additional District Judge, Jalandhar, whereby application filed by the respondents for condonation of delay of 846 days in filing the appeal was allowed.

Learned counsel for the petitioners submitted that application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the Act") was filed by the respondents, for condonation

of delay of 846 days in filing the appeal, was allowed without there being any merit and present petition be accepted and order dated 13.10.2015 be set aside.

Having considered the submissions made by learned counsel for the petitioners and appraisal of the record of the case, this Court is of the considered view that matter in controversy is short and simple that first Appellate Court, while entertaining the appeal, condoned the delay of 846 days in filing the appeal. The ground taken in the application was that legal opinion was sought from the District Attorney, Jalandhar and the same was forwarded to Director, Prosecution and Litigation, Punjab and Additional Secretary to Government, Department of Local Bodies, Punjab. The opinion was given by the Director that it was not a fit case for filing of appeal but subsequently Additional Secretary to Government, Department of Local Bodies, Punjab decided to file appeal and challenge the judgment & decree passed by the Court of first instance because the State has not been given any opportunity to defend the case by filing the written statement. At the same time, order was also passed that delinquent officials to be dealt with departmentally for the lapse and thereafter, present application was filed and that was the reason for delay in filing the appeal.

The Court below has already accepted the contention of the State that rather than deciding the matter in *ex parte*, it should be heard on merits. There is absolutely no illegality in the order as per settled proposition of law that as far as possession, the matter should

be decided after hearing both the sides, rather than deciding the matter *ex parte*. While dealing with such application for condonation of delay, the Court is also to see that it does take some time by the State to decide to file appeal or not to file appeal and something happened in the case and ultimately it was decided to file the appeal because the State remained unrepresented on account of non-filing of the written statement. The Court below, while taking these important factors into consideration, decided to condone the delay vide order dated 13.10.2015 and there is no ground to interfere in the said findings.

Resultantly, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

May 19, 2016
"DK"