

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

1. CR No.6301 of 2015
Date of decision : 19.01.2016

Swaran Singh

...Petitioner

Versus

Ragbir Singh and ors.

...Respondents

2. CR No.6577 of 2015
Date of decision : 19.01.2016

Amandeep Kaur

...Petitioner

Versus

Ragbir Singh and ors.

...Respondents

3. CR No.86 of 2016
Date of decision : 19.01.2016

Chamkaur Singh and another

...Petitioners

Versus

Ragbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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. Hardip Singh, Advocate for the petitioner
(In CR No.6301 of 2015)

Mr. Joginder Sharma, Advocate for the petitioner
(In CR No.6577 of 2015)

Mr. Sanjiv Bansal, Advocate for the petitioners.
(In CR No.86 of 2016) &
for respondent Nos.2 and 3 (In CR No.6577 of 2015)

Mr. J.S. Bhandohal, Advocate for respondent No.1
(In CR No.6301 of 2015) & (In CR No.86 of 2016).

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three revision petitions bearing CR No.6301 of 2015 titled as Swaran Singh Vs. Raghbir Singh and ors., CR No.6577 of 2015 titled as Amandeep Kaur Vs. Raghbir Singh and ors., and CR No.86 of 2016 titled as Chamkaur Singh and another Vs. Raghbir Singh and another.

CR No.86 of 2016 has been filed against the order dated 11.12.2015 (Annexure P-1) passed by the Additional District Judge, Patiala, whereby application filed under Section 5 of the Limitation Act in support of the first appeal seeking condonation of delay of 208 days in filing the appeal, has been dismissed, whereas two other revision petitions have been filed against the dismissal of the objections in the pending execution application seeking execution of the judgment and decree dated 21.04.2014 passed by the trial Court in civil suit No.315-T dated 27.04.2010.

Mr. Sanjiv Bansal, learned counsel appearing on behalf of the

petitioner in CR No.86 of 2016 submits that judgment and decree in the aforementioned suit was passed on 21.04.2014. Certified copy of the same was applied on 06.12.2014 and the same was supplied on 10.12.2014. The appellant engaged Sh. H.S. Anand, Advocate, Nabha as their counsel, who assured that suit is of civil in nature and there is no need to come present on each and every date. The counsel never disclosed regarding the proceedings of the suit and petitioner-applicant acquired the knowledge of the decision on 06.12.2014 when the respondent No.1 openly proclaimed that he would get sale deed registered as he has succeeded in the suit seeking specific performance of the agreement to sell dated 14.12.2006 and as such the certified copy of the same has been applied on 06.12.2014 and in this process, delay of 208 days had occurred. In support of his contention, he has relied upon judgment of Hon'ble Supreme Court in 2015(7) SCC 373, *Himalayan Cooperative Group Housing Society Vs. Balwan Singh*.

Mr. Bhandohal, learned counsel appearing on behalf of respondent submits that no explanation, much less, reasonable explanation has been given in not filing the appeal within time. The petitioner should have been vigilant in ascertaining the outcome of the suit and sitting at home would not serve the purpose and the entire blame cannot be put on to the concerned Advocate and rightly so application seeking condonation of delay has been dismissed.

CR No.6577 of 2015, has been filed by Amandeep Kaur who is none-else but the daughter of Jeet Singh, is aggrieved of the order, whereby objection vis-a-vis execution of the judgment and decree, has been declined.

Mr. Joginder Sharma, learned counsel appearing on behalf of petitioner in CR No.6577 of 2015 submits that since Amandeep Kaur is daughter of Jeet Singh, she has right to defend her share as Jeet Singh had died intestate.

CR No.6301 of 2015 has been filed at the instance of Swaran Singh, whose objection petition has been dismissed on the ground that he is third party as he has acquired the ownership of the property alleged to be sold by the Raghbir Singh to Jeet Singh by virtue of the sale deed dated 20.10.2010 i.e. after the filing of the suit, which was filed on 27.04.2010. The trial Court has dismissed the objection without framing the issues which are not in consonance with the provision of Order 21 Rule 101 of the Code of Civil Procedure.

I have heard learned counsel for the parties and appraised the paper book.

As regards the contents of the revision petition No.86 of 2016, I am of the view that parties should not be made suffer on account of lapse of the counsel. Once the petitioner has not been informed by the counsel about the outcome of the suit, it is only on acquisition of the knowledge of the suit on 06.12.2014, certified copy of the same was applied on 06.12.2014 and thus delay of 208 days had occurred in filing the appeal and supported by the principles culled out by Hon'ble Supreme Court in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and ors.*, (2013) 12 SCC 649, which reads thus:-

“The principles applicable to an application for condonation of delay are as follows:-

(i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

(ii) *The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

(iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

(iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors*

to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

In view the aforementioned facts, the impugned order declining the application is hereby set aside. Delay of 208 days is condoned. The lower Appellate Court being the last Court of facts and law, is directed to hear and decide the appeal on merits preferably within a period of four months from the date of receipt of certified copy of the order.

Since, Amandeep Kaur was defendant in the civil suit, she has no independent right to file the objection and in case she is aggrieved, she is well within his right to file the first appeal before the lower Appellate Court. In view of such findings, no ground is made out to interfere in the aforementioned revision petition declining the objection petition. Vis-a-vis dismissal of the objections filed at the instance of Swaran Singh, I am of the view that sale deed has been effected during the pendency of the suit & thus sale deed is hit by Doctrine of Lis pendense. It is settled law that third party also have a right to file the appeal in case his right is being effected. Remedy if any is to file the appeal and not to file the objection as trial Court cannot go behind the decree.

Keeping in view the aforementioned facts, revision petition bearing No.86 of 2016 is allowed and CR Nos.6577 and 6301 of 2015 are dismissed.

19.01.2016

pawan

(AMIT RAWAL)
JUDGE