

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.6673 of 2015 (O&M)

Date of Decision: February 25, 2016

Puran Singh

...Petitioner

Versus

Rajinder Kaur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.S.S.Gurna, Advocate,
for the petitioner.

Mr.Ramandeep, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the order dated 1.9.2015, whereby the Civil Misc.Appeal against the order dated 27.1.2014 passed in application under Order 39 Rule 1 & 2 of the Civil Procedure Code filed by the respondent-wife in a suit for declaration, has been dismissed being barred by 62 days.

Mr.S.S.Gurna, learned counsel appearing on behalf of the petitioner-defendant submits that though actual delay was 32 days, but in the application it was mentioned as 62 days. The petitioner had gone abroad on 6.12.2013, which fact is evident from the copy of the passport and arrived in India on 6.3.2014 and filed the appeal on 1.4.2014 as the next date in the trial Court was 28.3.2014. After the enquiry on 22.3.2014, he came to know about the order and filed the appeal with promptitude, but the

Court by relying upon the judgment referred in the impugned order,

declined the application and the appeal, whereas the principles culled out in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 Supreme Court Cases 649** support the case of the petitioner.

Mr.Ramandeep Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that the visa was valid for three months and, therefore, the petitioner could not stay out of India more than that period. The validity of the visa was upto 26.11.2015 and, therefore, on the date of his visit, he did not have the visa and this is a concealment and, therefore, rightly so, the application has been dismissed for want of limitation. The application under Order 39 Rule 1 & 2 CPC was pending since 4.7.2013. No steps have been taken to contest the application. Moreover, it was the counsel, who had to argue the case and not the petitioner and, thus, prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book and am of the view that there is substance in the submissions of learned counsel for the petitioner. The Hon'ble Supreme Court in **Esha Bhattacharjee's case (supra)**, while condoning the delay, has culled out the following principles:-

“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 encapsule 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 or 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.”

The present case squarely falls within the aforementioned principles. Moreover, even the judgment relied upon by the Additional District Judge in his order while declining the application, supports the case of the petitioner. The visa was granted on 26.11.2013 and the petitioner has left India on 6.12.2013 and came back on 6.3.2014. These facts are evident from the copy of the passport annexed with the paper book. After enquiring about the passing of the order on 22.3.2014, appeal has been filed on 1.4.2014. In case, there was merit in the appeal, the petitioner should not have been thrown out on the ground that the appeal was barred by law of limitation.

Keeping in view the aforementioned facts and circumstances, the impugned order is set-aside. The delay of 62 days in filing the appeal is condoned. Civil Misc.Appeal is restored back to the original number.

Parties, through their counsel, are directed to appear before the Lower Appellate Court on 15.3.2016 and contest the appeal on merits.

Revision petition stands allowed.

February 25, 2016
ramesh

(AMIT RAWAL)
JUDGE