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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7890-2015 (O&M)

Date of decision : 01.03.2016

Harinder Singh

...Petitioner

Versus

Amarjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Divanshu Jain, Advocate
for the petitioner.

Mr. Chetan Bansal, Advocate
for the respondents.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the order dated 20.07.2015 passed by the lower Appellate Court, whereby an application seeking condonation of delay in filing the statutory appeal against the judgment and decree dated 04.10.2013 being barred by one year 28 days, has been dismissed.

Mr. Divanshu Jain, learned counsel for the petitioner-defendant submits that the respondents-plaintiffs filed a suit for possession of half share by way of partition of Kothi No.179, Khasra No.2311/2285/1831, situated in Ajit Nagar outside Sultanwind Gate, Amritsar, as per jamabandi for

the year 2005-06. The counsel engaged on their behalf assured that he will inform the outcome of the suit, however, on the persistent enquiry, the counsel did not inform and ultimately on realizing the factum of the judgment and decree aforementioned, the appellant/applicant applied for certified copy of the judgment and decree which was delivered to them on 11.01.2014, in that process, the delay of one year and 28 days, has occurred. This fact was categorically stated in the application, but the same has been declined. Though the averment in the application had been proved but substantive right of the statutory appeal cannot be taken away the appeal that could not be filed within the limitation, thus, urges to this Court to set aside the order and issue an appropriate direction to the lower Appellate Court to decide the appeal on merits, in accordance with law.

Mr. Chetan Bansal, learned counsel appearing on behalf of the respondents-plaintiffs submits that no reasonable explanation, much less, cogent reasons, have been assigned in the application seeking condonation of delay. Even the affidavit of the counsel had not been brought on record in support of the averments. In the absence of the same, the lower Appellate Court has rightly dismissed the application. During the stage of evidence, it has come on record that three more cases between the parties are pending, and therefore, the plea of the ignorance of the outcome of the suit cannot be accepted and prays for dismissal of the revision petition. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court in **“B. Madhuri Goud V/s B. Damodar Reddy” 2012 (12) SCC 693** and the judgment of this Court rendered in **“Malkiat Singh and another V/s Balbir Singh and another” 2012 (5) RCR (Civil) 518.**

I have heard the learned counsel for the parties and appraised the

paper book and of the view that there is a merit in the petition. Honb'le Supreme Court in *“Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others” (2013) 12 Supreme Court Cases 649*, has culled out the following principal, viz-a-viz the condonation of delay, the same 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.”

I am of the view that the present case falls within the principles laid down by the Hon'ble Supreme Court rendered in **Esha Bhattacharjee's case (supra)**. No harm or prejudice would be caused to the party, in case, the appeal is heard on merits, as the substantive right of the petitioner-defendant in seeking the vindication of his grievance by filing the statutory appeal, has been taken away being barred by law of limitation. There is no dispute to the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **“B. Madhuri Goud's case (supra)**, but the facts and circumstances of the each case have to be seen. There are certain instances, where the counsel do not come forth in filing the affidavit in order to avoid the complaint from the Bar Council, therefore, it is not necessary that in every case, counsel would give an affidavit, viz-a-viz the explanation of not informing the party about the outcome of the pending suit, enabling the party to challenge the same.

Keeping in view the aforementioned facts, the impugned order under challenge is hereby set aside and the application seeking condonation of one year 28 days' delay in filing the statutory appeal is allowed and the appeal is restored to its original number subject to the payment of cost of ₹ 10,000/-.

It is expected that the lower Appellate Court decide the appeal on merits in accordance with law as expeditiously as possible preferably within a period of 5 months from the receipt of the certified copy of this order.

01.03.2016
yogesh

(AMIT RAWAL)
JUDGE