

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

-.-

ESA 18 of 2016 (O&M)

Date of decision: 09.08.2016

Lal Singh and another

.....Appellants

Versus

Matadeen since deceased through his LRs and others *.....Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Sanjay Mittal, Advocate
for the appellants

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Rekha Mittal, J.

The present appeal has been preferred to assail orders dated 11.02.2008 (Annexure A-8) passed by the Civil Judge (Junior Division) Mohindergarh and dated 30.07.2010 (Annexure A-10) passed by the Additional District Judge (Fast Track Court) Narnaul whereby objections filed by the appellants in execution petition preferred by Matadeen were ordered to be dismissed and the appeal preferred against the order passed by the executing court came to be dismissed by the appellate Court.

Along with the appeal, an application has been filed under Section 5 of the Limitation Act for condoning delay of 1933 days in filing the appeal. Counsel for the applicants/appellants has submitted that the impugned orders passed by the Courts below were challenged within limitation by filing Civil Revision No.1843 of 2011, withdrawn on 20.08.2013 with liberty to file an appeal. It is argued that as the applicants were pursuing remedy of revision under a bona fide belief that the said petition is maintainable, delay for the period during which the revision petition remained pending before this Court is liable to be condoned. It is

further submitted that the applicants were duly informed about withdrawal of the revision petition and advised to file the appeal. However, in the last week of October/November 2013, the brief was returned to counsel in the Court below but the same got misplaced by Clerk of that counsel and was found in January 2016. It is submitted that as delay in filing the appeal is due to reasons that are beyond control of the applicants, the same is liable to be condoned so that the appeal preferred by the appellants is heard and disposed of on merits. Another submission made by counsel is that technicalities of procedure should not be allowed to stand in the way of substantial justice.

I have heard counsel for the applicants/appellants and perused the paper book.

Indisputable, there is no quarrel with the settled position in law that the Court is required to adopt a justifiable liberal approach to do substantial justice to the parties while deciding an application for condonation of delay. However, in *Ramlal and others vs. Rewa Coalfields Limited*, AIR 1962 SC 361, it has been 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.

In the case at hand, there is a colossal delay of 1933 days in filing the appeal without giving any plausible explanation thereto. As is evident from record that the impugned orders were challenged within limitation by filing Civil Revision No. 1843 of 2011 but it was got withdrawn on 20.08.2013 with liberty to file an appeal and the brief was stated to be taken back by the appellants from counsel in November 2013. The averments raised by the applicants in regard to misplacement of brief or the same having been found in the last week of January 2016 do not find corroboration from any materials whatever. The whole story put forth by the appellants to constitute sufficient ground envisaged under Section 5 of the Limitation Act seems to be quite vague and is a mere concoction to seek indulgence of the Court as no affidavit of counsel or clerk of Counsel has been filed. The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation which is completely missing in the present case and thus, the application is liable to be dismissed and is ordered accordingly. As a natural corollary, the appeal is also dismissed being barred by limitation.

(Rekha Mittal)
Judge

09.08.2016
mohan bimbira

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