

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

**RSA No.4917 of 2010 (O&M)
Date of decision:23.11.2016**

Hardyal Singh ... Appellant
Vs.

Joginder Singh and others ... Respondents

RSA No.1803 of 2011 (O&M)

Hardyal Singh ... Appellant
Vs.

Joginder Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Tacoria, Advocate
for the appellant.

Mr. R.K.Handa, Advocate
for respondents No.1 and 2.

Mr. D.S.Adlakha, Advocate
for respondent No.3.

AMIT RAWAL J.

C.M.No.14569-C-2010 in RSA No.4917 of 2010

For the reasons stated in the application, duly supported by an affidavit, delay of 96 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.5063-C-2011 in RSA No.1803 of 2011

For the reasons stated in the application, duly supported by an affidavit, delay of 33 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.5064-C-2011 in RSA No.1803 of 2011

This is an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 223 days in filing the appeal which is duly supported by an affidavit.

Mr. R.S.Tacoria, learned counsel for the applicant-appellant in support of his application, relied upon the judgment of the Hon'ble Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 Supreme Court Cases 649**, whereby, the principles for seeking condonation of delay have been laid down which are reproduced herein below:-

“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 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.

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.”

The present case falls within the parameters of the principles relied upon by the Hon'ble Supreme Court.

In view of what has been observed above, delay of 223 days in filing the appeal is condoned.

C.M. stands allowed.

RSA Nos.4917 of 2010 and 1803 of 2011

This order of mine shall disposed of two Regular Second Appeals bearing Nos.4917 of 2010 and 1803 of 2011.

Both Regular Second Appeals are arising out of decision of civil suit bearing No.71 of 2005. The first one is arising out of disposal of the application filed under Order 39 Rule 2-A of Code of Civil Procedure (hereinafter referred to as “CPC”), whereby, the alleged contemner of the status quo order dated 19.04.2000 has been convicted, but in the appeal has been acquitted, therefore, the first Regular Second Appeal at the instance of the plaintiff, whereas, other Regular Second Appeal is arising out of the

judgment and decree rendered by the Lower Appellate Court, whereby, suit of the appellant-plaintiff was decreed by the trial Court vide which the defendants were directed to hand over the possession of the property in dispute to the plaintiff within a period of two months from the date of the judgment and decree by further restraining them from dispossession from the suit property, except, in due course of law.

Mr. R.S.Tacoria, learned counsel appearing on behalf of the appellant-plaintiff submitted that the plaintiff originally had filed a suit for permanent injunction restraining the defendant-respondents from forcible interference/dispossession and the trial Court, vide order dated 19.04.2000, i.e., while issuing notice, granted the status quo. However, in the evening of the same very date, respondents No.1 and 2 dispossessed the plaintiff and accordingly, an application for incorporating the relief of mandatory injunction was moved on 07.06.2000. Reply thereof was filed on 26.07.2000, accordingly, the application for amendment was allowed.

During all these dates, respondent-defendants No.1 and 2 did not bring into notice of the Court the alleged compromise dated 18.04.2000 allegedly arrived at between the parties, whereas, according to the respondent-defendants, the plaintiff had surrendered the possession to the respondent-defendants. Even while filing reply to the application seeking amendment, no such fact was disclosed. For the first time in the written statement filed on 07.09.2002, the factum of compromise was disclosed which was exhibited as D1. The compromise neither bore the signature of the appellant-plaintiff nor the stamp paper purported to have been purchased in the name of the appellant on 15.04.2000. Even the name of the scribe was

not mentioned. The most interesting fact is that the compromise alleged to have been signed by the wife of the appellant-plaintiff, who was not the plaintiff or party in the suit. The Lower Appellate Court has erroneously drawn the inference that appellant-plaintiff has failed to rebut the same by filing the replication, therefore, the compromise deemed to be accepted while setting aside the well reasoned findings of the trial Court. The Lower Appellate Court has failed to appreciate that DW1 to DW3 were procured witnesses, who allegedly, stated that the appellant was never in possession of the suit property as a tenant and on the other hand, they stated that as per the compromise, the appellant handed over the possession. Both the statements being contradictory to each other. Even on bare perusal of the alleged compromise, much less its contents, would reveal that it was an unsigned application on behalf of the applicant which was to be filed in the Court, that has erroneously been taken into consideration, thus, there is perversity.

Even the complaint Ex.P5 was also submitted to the police station. The trial Court rightly convicted the respondents to undergo imprisonment for a period of three months under the provisions of Order 39 Rule 2-A CPC, whereas, the Lower Appellate Court abdicated in misconstruing the aforementioned fact while dismissing the suit and as well as allowing the appeal and thus urges this Court for setting aside the findings under challenge.

Per contra, Mr. R.K.Handa, learned counsel appearing on behalf of respondent-defendants No.1 and 2 submitted that judgment and decree rendered by the Lower Appellate Court is perfectly legal and

justified as the plaintiff voluntarily vacated the property in dispute as per the terms and conditions of the compromise Ex.D1. Once it was found and proved that the property stood vacated, there was no occasion for the trial Court to grant the mandatory injunction, much less injunction and convict defendants No.1 and 2.

He further submitted that defendant No.1 purchased the plot measuring 200 square yards, on which the room in question was constructed, as per the registered sale deed dated 01.07.1989 from Chander Bhan in lieu of ₹20,000/-. The possession of that room was delivered to defendant No.1. Defendant No.1, thereafter, constructed a house over this plot in the year 1990-91 consisting of three rooms, one lobby, one hall, bath-room, latrine, kitchen etc. Mutation bearing No.613 (Ex.D3) in this regard, had also been sanctioned. As per the compromise, wife of the appellant, namely, Suresh Kumari had taken a sum of ₹5,000/- and vacated the suit property. Thus, no dispute ever arose regarding the ejectment or dispossession of the suit property. Once the Lower Appellate Court rightly found that the plaintiff voluntarily handed over the possession of the property in question, there was no occasion in convicting defendants No.1 and 2.

Mr.D.S.Adlakha, learned counsel for respondent No.3 submitted that defendant No.3 had not been issued notice of the aforementioned status quo order. The conviction was also against defendants No.1 and 2, therefore, the Lower Appellate Court has not convicted the defendants for alleged violation of the status quo order and thus, urged this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is force and merit in the submissions of Mr. Tacoria, for, the conceded position on record is that on filing of the suit, there was a status quo order dated 19.04.2000. It was on the evening of the same date, the appellant-plaintiff was dispossessed resulting into moving of the application for incorporating the relief of mandatory injunction as noticed above, was allowed but during all these proceedings, the defendants did not disclose the factum of compromise. Even the compromise was also not between the plaintiff and defendants but between wife of the appellant-plaintiff and defendants which has not been proved on record, in accordance with law as neither the signatures/thumb impressions of the wife proved on record. The onus was upon the defendants to prove the same. Even the contents of the alleged compromise do not indicate that at any point of time parties have entered into compromise. All these factors were duly weighed by the trial Court in decreeing the suit. No sane person, who is in long and settled possession can be dispossessed except in due course of law. It is in this aspect of the matter, the trial Court after noticing the evidence led in extenso qua alleged violation of status quo order convicted the defendants to undergo the imprisonment for a period of three months. The alleged stamp papers have also been purchased much prior to the passing of the status quo order. It cannot be assumed that defendants could foresee the filing of the suit and arrive at compromise. It is a ploy to defend the alleged dispossession by taking the aid of the aforementioned forged documents. Though compromise has been exhibited but has not been proved in

accordance with law. The Lower Appellate Court has not taken into consideration the aforementioned facts, thus, in my view, has committed illegality and perversity in setting aside the well reasoned findings of the trial Court in decreeing the suit and as well as conviction of the defendants.

I am of the view that a person, who does not have regard and respect of the Court orders, cannot go scot-free and have to be punished. However, since innumerable period has passed, during the interregnum, I deem it appropriate, instead of upholding the conviction of the trial Court, there shall be compensation of ₹1,00,000/- in terms of costs to be imposed upon defendants No.1 and 2 to be paid to the plaintiff within a period of three months from the date of receipt of a certified copy of this order.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article

254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeals aforementioned.

The judgment and decree of the Lower Appellate Court is hereby set aside and that of the trial Court is restored to its original number.

Accordingly, the appeals stand allowed.

(AMIT RAWAL)
JUDGE

November 23, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No