

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

Date of decision:9.5.2016

1.

RSA No.2042 of 2012(O&M)

Vijay Kumar and others

....Appellants

VERSUS

Om Parkash and others

.....Respondents

2.

RSA No.2043 of 2012(O&M)

Vijay Kumar and others

....Appellants

VERSUS

Om Parkash and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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. Amit Jhanji, Advocate for the appellants.

Mr. Sandeep Arora, Advocate for the respondents.

REKHA MITTAL, J.

This order shall dispose of RSA Nos.2042 and 2043 of 2012 as identical questions of law and fact are involved for adjudication. For the facility of reference, facts are taken from RSA No.2042 of 2012.

The present appeal has been preferred against the consistent findings recorded by the Courts below whereby suit filed by the respondents for specific performance of the agreement dated 06.07.1993 in

regard to house property detailed in headnote of the plaint has been decreed. Along with the appeal, an application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 387 days in filing the appeal.

Counsel for the applicants/appellants has submitted that delay in filing the appeal should not be allowed to stand in the way of substantial justice. It is further submitted that neither delay in filing the appeal is intentional much less mala fide nor it has resulted in creating third party interests in the *lis*, due to failure of the applicants to file the appeal within the prescribed period of limitation. Hon'ble the Supreme Court of India in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, has culled out certain principles applicable to an application for condonation of delay wherein it has been held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice.

Counsel for the respondents, on the contrary, has submitted that as the applicants have miserably failed to explain any sufficient cause for condoning a long delay of more than one year, they cannot derive any advantage from the principles laid down in the referred authority.

I have heard counsel for the parties, perused the records particularly the averments raised in the application filed under Section 5 of the Limitation Act supported by an affidavit of Vijay Kumar, one of the applicants. A relevant extract from para 3 and 4 of the application reads thus:-

“3. That the present appellant came to know about the judgment dated 5.1.2011 when the appellants have received the notice for the execution of the above said judgment dated 05.01.2011 in the month of January 2012. Thereafter, the present appellants inquired from their counsel about the judgment passed by the Id. District Judge dated 05.01.2011 and on inquiry it transpired that the Hon’ble Ld. Additional District Judge affirmed and upheld the judgment passed by the lower court dated 2.4.2008.

4. That the present appellant engage (sic) the undersigned – counsel on 30.04.2012 for filing the present regular second appeal before the Hon’ble Court and due to the above mentioned facts the appellant could not file the present appeal before the Hon’ble court within the period of limitation and caused delay of 387 days.”

There cannot be any quarrel with the settled proposition in law that the Court is required to adopt a liberal and pragmatic approach while dealing with question of condonation of delay. However, Hon’ble the Apex Court in Ramlal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361. has 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.

A plain and careful reading of the aforesaid observations make it evident that before seeking indulgence of the Court in exercise of its discretionary jurisdiction under Section 5 of the Limitation Act, the applicant is obligated to allege and prove sufficient cause for condoning delay. Turning to the case at hand, plea of the applicants is that they came to know about decision dated 05.01.2011 dismissing their appeal in the month of January, 2012 when they received a notice from the executing Court. There is not even a whisper as to what were the circumstances much less beyond their control that stood in their way to make requisite inquiries in regard to appeal pending in the Court at Jalandhar. A litigant who is not vigilant and diligent renders himself ineligible to seek indulgence in exercise of discretionary jurisdiction of the Court. It appears that the applicants have raised a plea in para 3 of the application as if they were seeking setting aside ex parte proceedings in a pending matter or restoration of a case dismissed for non-prosecution. As a matter of fact, there is no plea raised much less averments constituting sufficient cause. This apart, if a plea as has been raised in the instant case is accepted for condoning delay of 387 days, there may not be a single case where application for condonation of delay can be rejected.

In view of the above, when the facts and circumstances of the present case and conduct of the applicants are examined in the light of observations made in Ramlal and others' case (supra) and the principles laid down in Esha Bhattacharjee's case (supra), it is not a fit case wherein the applicants deserve any relief.

In view of what has been discussed hereinabove, the applications for condoning delay of 387 days in filing the appeals are

dismissed. As a natural corollary, the appeals fail and accordingly
dismissed being barred by limitation. No order as to costs.

MAY 9, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE