

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1236 of 2017 (O&M)

Date of Decision: 20.03.2017

Joginder Pal

... Petitioner(s)

Versus

Jagdish Pal and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Rohit Joshi, Advocate
for the petitioner(s).

Shekher Dhawan, J.

CM-5974-CII-2017

Application is allowed, as prayed for. A copy of judgment & decree dated 18.9.2014, passed by the Court of learned Civil Judge (Junior Division), Batala is taken on record as Annexure A1.

CR-1236-2017

Present petition is challenge to the order dated 8.12.2016, passed by learned Additional District Judge, Gurdaspur, whereby application, filed by the petitioner, for condonation of delay of 401 days in filing the appeal, was dismissed as there was no cogent reason for the same.

2. Learned counsel for the petitioner contended that petitioner was abroad and had gone to Muscat, Oman in the month of January, 2012 and remained there till 13.10.2015. The petitioner came back to India on 13.10.2015. The Court has not considered this aspect while deciding the application for condonation of delay. Otherwise, the case would be decided on merits only.

3. Having considered the submissions made by learned counsel for the petitioner and record of the case, this Court is of the considered view that the facts are not disputed that the judgment & decree was passed on 18.9.2014 in Civil Suit No. 186 dated 5.8.2011 by the Court of learned Civil Judge (Junior Division), Batala. Appeal was preferred after delay of 401 days. The same plea was taken before the Court below as has been taken herein and the same has been rightly negated by the Court below that even if the petitioner remained abroad from January 2012 till 13.10.2015, the civil suit was contested by the petitioner (applicant) and he was duly represented by the counsel. The civil suit was filed in the year 2011 and the petitioner had gone abroad in the month of January 2012. After decision of the civil suit, copy of the judgment & decree was obtained by his counsel and the Court below rightly negated the plea that petitioner was not aware of the passing of the judgment & decree dated 18.9.2014. It is also not disputed that as per case of the petitioner himself, copy of the judgment & decree was applied for on 26.9.2014; the same was prepared on 30.9.2014 and it was supplied to counsel for the petitioner on 4.10.2014.

4. Law on this point is settled that delay in filing the proceedings before the Courts are not to be considered merely on the asking but there must be some justified grounds. In this case also, there is absolutely no justified ground to condone the delay of 401 days in filing the appeal and the Court below has rightly exercised discretion vested in it.

5. Hon'ble the Apex Court, in ***P.K. Ramachandran Vs. State of Kerala and Another, AIR 1998 SC 2276*** has dealt with the similar matter

and held as under:

“Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.”

6. In ***Raghubansh Vs. State of Haryana, 1998(2) R.C.R. (Civil) 108***, a Division Bench of this Court, while dealing with the issue, held as under:

“It is undoubtedly true that in Chandra Mani's case it was observed that the Court should be liberal and the expression “sufficient cause” should be pragmatically construed in a “justice oriented approach”. However, even by most liberal construction it does not appear to be possible to say a complete good-bye to the Limitation Act and to hold that whatever be the delay and howsoever unsatisfactory the explanation, the Court is bound to condone it.”

7. The plea taken by learned counsel for the petitioner for condonation of inordinate delay of 401 days is neither cogent nor satisfactory. Finding no merit in the present petition, the same stands dismissed.

(Shekher Dhawan)
Judge

March 20, 2017

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No