

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

**CR No. 1361 of 2017 (O&M)
DECIDED ON: FEBRUARY 28, 2017**

UNION OF INDIA & OTHERS

.....APPLICANTS/PETITIONERS

VERSUS

SUKHWANT KAUR @ SUKHWINDER KAUR & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Anita Balyan, Advocate
 for the applicants/petitioners.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated October 05, 2016 passed by learned District Judge, Amritsary vide which an application under Section 5 of the Limitation Act (for short 'Act') for condonation of delay in filing the appeal against the judgment and decree dated March 04, 2015 passed by learned Additional Civil Judge (Sr. Division), Baba Bakala Sahib; has been dismissed.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the applicants/petitioners that the same is absolutely against the evidence available on file and settled cannons of law.

Misappretiation of evidence avaiable on file as well as legal propositions

applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice.

Undisputably, the suit filed Sukhwant Kaur @ Sukhwinder Kaur against the Union of India and others was decreed vide judgment and decree dated March 04, 2015 and immediately after obtaining the copy of judgment and decree it was sent to the concerned department in Bengal seeking opinion as to whether the appeal is to be filed or not and after obtaining the opinion in this regard, an appeal alongwith the instant application under Section 5 of the Act was filed. Since there was a long process/procedure to be adopted by the concerned department, delay of 170 days has occurred. Otherwise, neither the delay is intentional nor wilful and has occurred due to a lengthy procedure.

Learned counsel for the applicants/petitioners further submits that ordinarily, a litigant does not stand to benefit by lodging an appeal late and also refusing to condone delay can result in a meritorious matter being thrown out at the very threshold defeating the cause of justice. He also submits that a liberal view should be taken in the matter, especially in the circumstances where there is a procedural delay and the delay should be condoned and the matter should be allowed to be decided on merits. Since the delay is bonafide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Moreover, the other party can be compensated by way of cost. While concluding his arguments, it has been submitted by learned counsel for the applicants/petitioners that since the delay is procedural, it deserves to be condoned by way of acceptance of this

petition.

This Court has given an anxious thought to the submissions made by learned counsel for the applicant but does not find any legal or factual weight therein.

Undoubtedly, an appeal has been preferred after a delay of 170 days. There is no plausible explanation except that the delay occurred is departmental one but the law of limitation is substantive law and has definite consequences on the right and obligation of a party to arise. Once a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party.

In the case of **P.K. Ramchandran vs. State of Kerela; 1997(7) SCC 556**; the Hon'ble Apex Court has held that the essential pre-requisite of exercising discretion to condone the delay is that the court must record its satisfaction that the explanation for delay was either reasonable or is satisfactory. Para No.6 of the afore-said judgment is relevant, which is reproduced 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. This appeal, therefore, succeeds and the impugned

order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”

Adverting to the facts of the case in hand, there is a delay of 170 days, which is absolutely unexplained. The mere fact that there was some procedure to be adopted before filing the appeal does not *ipso facto* mean that Union of India has right for the condonation of delay. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. Thus, considering the facts of the instant case, it can safely be concluded that there is no proper explanation given by the department for the delay except that the delay is a procedural one.

In the light of what has been discussed above, this court does not find any infirmity, illegality or impropriety in the impugned order.

Accordingly, instant petition being devoid of merit is dismissed.

FEBRUARY 28, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No