

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.104

Civil Revision No. 2546 of 2016 (O&M)
DECIDED ON: March 09, 2017

ANIL SEKHRI AND ANOTHER

..PETITIONERS

VERSUS

AYUSH SEKHRI AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vikas Behl, Sr. Advocate with
Mr. Parvinder Singh, Advocate
for the petitioners.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated October 05, 2015 (Annexure P-6) passed by Civil Judge (Jr. Division), Ludhiana whereby, an application for condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the judgment and decree July 31, 2006 filed by

the petitioners; has been dismissed.

While assailing the impugned order it has been argued with vehemence by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law being absolutely against the settled canons of law. In fact, it is amply proved on record from various documents that there are sufficient grounds for the condonation of delay in filing the application under Order IX Rule 13 of the Code for setting aside the ex-parte judgment and decree dated July 31, 2006. In fact, petitioner No.2-Savitri Sekhri was suffering from various ailments and was undergoing treatment in Mumbai, thus, it was not possible for her to travel to Ludhiana frequently. However, the Lawyer at Ludhiana engaged by the petitioners never informed either of the petitioners about the proceedings and the petitioners were wrongly proceeded as ex-parte in the said suit. Ultimately, an ex-parte judgment and decree in question was passed. Thereafter, on coming to know petitioners filed an application under Order IX Rule 13 of the Code for setting aside ex-parte judgment and decree dated July 31, 2006 alongwith an application for condonation of delay. However, an application for condonation of delay was dismissed without therebeing an *iota* of discussion. Further, learned trial Court has also not framed any issue with regard to application for condonation of delay, which is absolutely not in consonance with law. Learned counsel for the petitioners further submits that it is settled proposition of law that in case of condonation of delay, the courts should take a liberal view and should condone the delay and should proceed on to decide the substantive rights of the parties. It is pertinent to

mention here that in the present case, the suit, which was filed was itself not maintainable and further there is not an iota of evidence to prove that the property involved in the said decree was allegedly that the Joint Hindu Family property of the parties, rather, it is *prima facie* apparent tht the property held by a lady in her own name is her own self acquired property. More so, in the present case, when the ownership of the property by the mother of the petitioner Anil Sekhri is not disputed, thus, the Court should have seen the nature of the decree and should have allowed the application for condonation of delay.

Not only this learned trial Court while passing ex-parte judgment and decree as well as dismissing an application for condonation of delay has also ignored the order dated October 01, 2002 passed by learned Additional District Judge, Ludhiana whereby, an ad interim injunction application moved by the respondents/plaintiffs in the suit was dismissed. It has further been alleged by learned counsel for the petitioners that one of the defendants namely Anoop Sekhri was taken away by the nature during the pendency of suit. However, no legal representative of Anoop Sekhri was brought on record till date by the respondents/plaintiffs and the suit has been decreed against a dead person, which is absolutely against the law. Savitri Sekhri had also died now and her LRs were duly brought on record.

Learned trial Court has completely ignored the fact that procedural law, more-so the law of limitation in setting aside the ex-parte decree should not be an impediment in the adjudication of the substantive rights of the parties. More so, in the present case when the decree itself is

absolutely erroneous and against the settled canons of law. It has further been submitted by learned counsel for the petitioners that the Legislature has conferred the power to condone the delay by enacting Section 5 of the Limitation Act, “Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code, may be admitted after the prescribed period, if the appellant or the applicant satisfied the court that he had sufficient cause for not preferring the appeal of making the application within such period”. The Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to the parties by disposing of matters on 'merits'. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court.

Moreover, ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Otherwise also, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. To butters this

contention, learned counsel for the petitioners has placed reliance upon the pronouncement of Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others; 1987 (2) SCR 387**. While relying upon the judgment of this Court rendered in the case of **Pawan Kumar vs. Surjit Kaur and others; 2008 (1) RCR (Civil) 60**, it has been urged by learned counsel for the petitioners that in the above-said case delay of 1528 days in filing appeal due to mistaken legal advice by the counsel was condoned subject to payment of cost of 5,000/- to opposite party. Moreover, the party cannot be made to suffer on account of negligence of the parties or the non communication of the proceedings by the counsel. In this regard, learned counsel for the petitioners has relied upon the pronouncement of Hon'ble Apex Court rendered in the case of **Rafiz and another vs. Munshilal and another; 1981 AIR (SC) 1400** as well as of this Court rendered in the case of **Surinder Verma vs. Santosh Singhal and another; 2016 (1) PLR 825**.

Similarly, in the another case of **M.K. Prasad vs. P. Arumugam; 2001 (6) SCC 176**; delay of 554 days was condoned subject to payment of ₹50,000/- as costs.

While concluding his arguments, it has been submitted by learned counsel for the petitioners that since it is amply proved on record that petitioner No.2 was not having a good health and was under constant treatment at Mumbai and it was not possible for her to travel Ludhiana frequently and further, the counsel did not communicate the proceedings being carried on in the proceedings and also passing of ex-parte

proceedings/order as well as ex-parte judgment and decree and further the suit itself was not maintainable and the decree has been passed against a dead person. The dismissal of an application seeking condonation of delay is absolutely illegal and against the principles of natural justice. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant revision. Consequently, application seeking condonation of delay in filing the application under Order IX Rule 13 of the Code, deserves to be allowed.

After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioners as well as various documents available on record and scrutinizing the impugned order, this Court is of the considered view that various submissions made by learned counsel for the petitioners do not carry any legal or factual weight and further that the impugned order is absolutely in consonance with the documents available on file and the legal proposition.

The ex-parte judgment and decree in Civil Suit No. 537 of 16.07.1998 was passed on July 31, 2006 by learned Civil Judge (Jr. Division), Ludhiana and an application under Order IX Rule 13 of the Code for setting aside the ex-parte judgment and decree dated July 31, 2006 alongwith an application seeking condonation of delay was filed on June 06, 2009 i.e. Approximately after three years.

Learned counsel for the petitioners has tried to shift the entire burden upon the counsel engaged by the petitioners to defend the civil suit in which ex-parte decree was passed, contending that he did not inform or

communicate about the proceedings of the said case as well as passing of ex-parte judgment and decree dated July 31, 2006 but it cannot be accepted that after handing over the paper to an Advocate a party does not visit the court or to enquire about the proceedings being carried out in the suit telephonically. Petitioner No.1 is a well educated person and is a Chartered Accountant by profession, especially it cannot be expected that he had not enquired about the fate of the case. The mere fact that petitioner No.2 was suffering from different ailments and was not in position to visit Ludhiana from Mumbai frequently, also does not mean that for a period of about three years of the passing of ex-parte judgment and decree, they did not make any effort to call the counsel who was prosecuting or defending the case on their behalf. In case 'Balwant Singh vs. Jagdish Singh & ors. 2010 (6) SCALE 749', Hon'ble Apex Court while deciding an application under Section 5 of the Act observed as under:-

“13...We may state that even if the term, ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of ‘reasonableness’ as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as 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. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bonafide and based upon true and plausible explanations, as well as reflect 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. Liberal construction cannot be equated with doing injustice to the other party.

Adverting to the facts of the case in hand the observations made in the judgments relied upon by learned counsel for the petitioners are not in dispute but the same cannot be delivered as straight jacket formulae because each and every case has to be dealt with and disposed of on the peculiar facts and circumstances thereof.

It is the duty of the litigant to keep constant vision on their case(s) and if the litigants are not interested in pursuing the case then after the decision of the case they cannot take the plea that they were not in the

knowledge with regard to the status of the suit, which has been decided against them. Simply on the ground that there is some lapse or omission on the part of the counsel does not make any ground for condonation of delay. More so, there is nothing on record that petitioner No.2 constantly remained under treatment in Mumbai after the institution of suit till the filing of instant petition on June 06, 2009.

In the instant case, the contention of learned counsel for the petitioners is that counsel did not inform the petitioners or that petitioner No.2 could not contact the counsel at Ludhiana does not carry any substance and thus, such a ground appears to have been concocted just to make out a case for condonation of delay. Another contention of petitioners is that the ex-parte decree dated July 31, 2006 is a nullity having been passed against a dead person also carries no legal weight, in view of the fact that Avtar Kishan Sekhri was taken away by nature during the pendency of suit before learned trial Court also carries no legal weight especially, in view of the circumstances that he was survived by his mother, wife and sons. His Lrs were already party to the suit there is no other legal heir of the deceased Avtar Sekhri.

As far as the contention of the petitioners that the suit itself was not maintainable that the party to the suit was not proved to be Hindu Coparcenary property is concerned, the said question cannot be raised during the proceedings of an application under Section 5 of the Act. The said question is a matter of evidence and could be contentious issue in case judgment and decree dated July 31, 2006 is set aside. Prior to that no such

question can be raised by the petitioners. Thus, taking the case of the petitioners from any of the angles, this Court does not find any illegality, impropriety in the impugned order and this Court is of the considered view that the same is absolutely in consonance with the settled proposition of law as well as various documents available on file.

As a sequel of afore-said discussions, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned order is upheld.

No order as to costs.

MARCH 09, 2017
SHAM

(JASPAL SINGH)
JUDGE

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