

217

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

Civil Revision No.2688 of 2015

Date of Decision: 14.07.2017

MARKET COMMITTEE, PILUKHERA AND ANR.

.....Petitioners

Vs

RAMESHWAR PARSAD

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sudeep Mahajan, Advocate
for the petitioners.

Mr. M.K. Garg, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 05.01.2015 passed by Additional District Judge, Jind vide which application filed by them under Section 5 of the Limitation Act for condoning the delay in filing the first appeal was dismissed.

[2]. Brief facts are that plaintiff/respondent filed a suit for declaration to the effect that the order dated 19.01.2010 passed by defendant No.2/Haryana State Agricultural Marketing Board, Panchkula (hereinafter to be referred as 'the Board') in the suit in respect of annulment of Resolution No.15 dated 24.05.1995

passed by the petitioner Market Committee, Pilukhera vide which the plaintiff was deemed to be in continuous service of the Market Committee w.e.f. 11.11.1980, after 15 years of service and communication dated 10.03.2010 vide which the plaintiff was informed about the order of the Marketing Board was illegal, null and void.

[3]. The suit was decreed by the trial Court along with consequential relief of permanent injunction, restraining the defendants from acting upon the orders.

[4]. Against the judgment and decree dated 23.08.2012 passed by the trial Court, petitioners filed appeal before the First Appellate Court along with application under Section 5 of the Limitation Act for condonation of delay of 242 days in filing the appeal. The delay in filing the appeal was sought to be explained on the ground that the petitioner No.1/Market Committee is under the supervisory control of petitioner No.2/Board. On receiving the certified copy of the judgment and decree dated 23.08.2012 from the trial Court, the same was forwarded to the Board where the same was dealt with and was sent to the Legal Cell for advice. It was observed by the Legal Cell that since no evidence was produced, nor any witness appeared on behalf of the defendants in the suit, therefore, Secretary of the Market Committee, Pilukhera may be asked for

the reasons in not producing any evidence during the suit proceedings. Filing of appeal was also recommended.

[5]. In pursuance of the aforesaid opinion, Board inquired from the Marketing Committee and thereafter engaged a counsel for filing first appeal before the Lower Appellate Court. A panel of lawyers was available at the relevant time and the Authority of the Board was to engage the same. The appeal was got drafted from the counsel engaged by the Market Committee and the same was sent to the Board for vetting and approval. The matter was again dealt with the Board and necessary approval from the competent Authority was obtained after getting the same vetted from the Legal Cell. The approved draft was forwarded to the Market Committee which was ultimately filed through the counsel engaged after completing the necessary formalities/pleadings. A substantial time was consumed in following the aforesaid procedure. The counsel also consumed some time due to his health problem arising out of an accident. In the process, delay of 242 days occurred in filing the appeal.

[6]. Lower Appellate Court vide order dated 05.01.2015 rejected the application under Section 5 of the Limitation Act and as a consequence of that appeal was also dismissed being time barred. That is how the present revision petition came to be

filed by the petitioners before this Court.

[7]. Learned counsel for the petitioners submitted that matter in respect of condonation of delay should be considered on liberal pedestal. A liberal and pragmatic approach should be adopted as the meritorious matter should not be thrown at the verge of technicalities. The Court is obliged to meet out the injustice and the approach should be justice oriented and non pedantic while dismissing the application for condonation of delay.

[8]. Learned counsel for the respondent however opposed the prayer on the ground that Mr. B.S. Lohan, Advocate was engaged for filing the appeal. The ground pleaded for seeking condonation was that much time was consumed in official correspondence by the different authorities for obtaining sanction and approval for filing the appeal. Apparently, the sanction was granted in favour of Mr. B.S. Lohan, Advocate for filing the appeal, but he was not in a position to prepare the appeal due to injuries suffered by him in a road accident. He had sustained fractures.

[9]. Learned counsel submitted that the lower Appellate Court was much swayed by the fact that if, the physical health of the counsel was not conducive for his engagement, then why he was entrusted with the case, so as to cause further delay in

filing the appeal. The lower Appellate Court also commented that the applicants/appellants did not produce any copy of proposal and the approval accorded by the competent authority to show that the sanction was accorded by the Authority in favour of counsel and how much time was consumed by the counsel in filing the appeal. The ground taken by the applicants/appellants for seeking condonation of delay was not favoured by the lower Appellate Court on the ground the the medical certificate produced by the counsel before the Court was discrepant with regard to the actual date of accident viz.-a-viz. date of filing of the application, wherein the period during which inaction was alleged did not correspond to the medical certificate.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. It is true that the State cannot be placed on preferential pedestal and is not entitled to any special treatment in seeking condonation of delay. The time spent at the departmental level, where the file had to move from one office to another, the time is also consumed, but the negligence should not be so gross and deliberate in order to infer inaction and total lack of *bona fide* on the part of officials in proceedings with the case. The Court is entitled to take liberal view if the delay is not on account

of deliberate inaction or lack of *bona fide* on the part of the petitioners.

[12]. The observation of the lower Appellate Court that a lawyer should not have been engaged, who was having physical incapacity on account of suffering in the accident. The panel of lawyers was prepared. No physical disability was ever pointed out by anyone in respect of lawyer so engaged by the petitioners, nor the same can be inferred by presuming such contingent opinion. As a matter of fact, lawyer was engaged, who was having some physical disability. The extent of disability was not known to the petitioners before engaging the counsel. The counsel was one of the panelists counsel, therefore, his engagement cannot be faulted with. The only thing was that a delay had occurred while processing the case at different stages of the Authorities.

[13]. The Court is always liberal so as to advance substantial case of justice instead of dismissing the case on technical ground. The explanation furnished by the petitioners cannot be wholly unacceptable, even if there are some omissions. The delay is also not inordinate, nor any third party rights have come into being during the interregnum period.

[14]. In view of observations made in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy**

and others, 2013(4) CivCC 399 and **State of Rajasthan and another vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805**, I deem it appropriate to condone the delay of 242 days in filing the first appeal.

[15]. Consequently, impugned order dated 05.01.2015 passed by the Additional District Judge, Jind is set aside. Revision petition is allowed, however subject to the cost of Rs.10,000/- to be deposited in the District Legal Services Authority, Jind. Payment of cost shall be the condition precedent before granting any indulgence by the lower Appellate Court in the aforesaid context.

[16]. Both the parties are directed to appear before the lower Appellate Court on 31.07.2017.

July 14, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No