

Civil Revision No.2645 of 2017

[1]

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

Sr. No. 121

Civil Revision No. 2645 of 2017
Date of decision: April 20, 2017

Mohinder Kumar

.... Petitioner

Versus

Gurnam Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. M.S. Khaira, Senior Advocate with
Mr. Dharminder Singh Randhawa, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside the order dated January 25, 2017 (Annexure P-4) passed by Additional District Judge, S.A.S. Nagar (Mohali), whereby an application filed under Section 5 of the Limitation Act (for short 'Act') for condonation of delay in filing the appeal has been dismissed with further prayer to decide an appeal

on merits.

2. The contention of learned counsel for the petitioner is that petitioner filed a suit for possession by way of specific performance on the basis of an agreement to sell dated December 24, 2004 executed by the respondent/defendant for a total consideration of Rs.11,00,000/- on receipt of a sum of Rs.10,50,000/- as earnest money. Since, the respondent/defendant did not execute the sale deed as per the terms and conditions of the aforesaid agreement to sell, the petitioner was constrained to file a suit for specific performance. However, that suit was dismissed vide judgment and decree dated February 11, 2014 passed by Additional Civil Judge (Sr. Divn.), Dera Bassi. In order to prefer an appeal against the aforesaid judgment and decree dated February 11, 2014, the petitioner engaged Sh. Gur Rattan Pal Singh, Advocate and handed over his signed required papers after paying him counsel fee as well as court fee. At that time, it was informed by his counsel that he would file an appeal against the aforesaid judgment and decree February 11, 2014. The disposal of an appeal is likely to take 2-3 years. Believing his counsel, he kept silent.

3. Learned counsel for the petitioner further submitted that the petitioner was informed by some property dealer that when respondent/defendant is going to sell the plot in dispute to someone else, he visited the residence-cum-office of Sh. Gur Rattan Pal Singh, Advocate and came to know that his counsel had left for heavenly abode on April 02, 2014 and further that no appeal was filed by him in all his cases. It was only thereafter an appeal was preferred before the Additional District Judge, SAS

Nagar (Mohali) along with an application under Section 5 of the Act for condonation of delay of 708 days in filing the appeal.

4. Learned counsel for the petitioner while canvassing his arguments has submitted that ordinarily a litigant does not stand to benefit by lodging an appeal late. Moreover, refusing to condone delay can result in a meritorious matter being thrown out at the very threshold defeating the cause of justice. While relying upon the observations made by the Hon'ble Apex Court in case 'N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 Supreme Court 3222' learned counsel for the petitioner has contended that rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Now the limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Moreover, the primary function of the court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause. Adverting to the facts of the case, it has been submitted by learned counsel for the petitioner that delay in the instant case in filing the appeal against the judgment and decree dated February 11, 2014 has occurred on account of death of counsel engaged by the petitioner and further that believing the version of his counsel that disposal of an appeal is likely to take 2-3 years, he did not approach him to know about the fate of his appeal. The delay, if any, was

caused due to the aforesaid reasons and it can be safely concluded that there are sufficient grounds/reasons for the condonation of delay of 708 days.

5. After bestowing due consideration to the aforesaid submissions and scrutinizing the impugned order, this court does not find any legal and factual substance therein.

6. Concededly, an appeal before the lower appellate court has been filed by the petitioner after a delay of 708 days. It cannot be expected that after handing over the papers to an Advocate, a party will not visit to him to know about the fate of his case. It is not as if a party is absolved of all the liabilities after handing over the papers to his counsel. He is required to be vigilant to know, if the service has been effected upon other party; whether any interim relief has been granted or not especially, in the circumstances, that suit of the petitioner was dismissed by the Additional Civil Judge (Sr. Divn.) Dera Bassi. There is no dispute with regard to observations made in case '*N. Balakrishnan vs. M. Krishnamurthy (supra)*' but each and every case has its particular and peculiar facts and circumstances, which are to be kept in mind while disposing of such an application. 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. In the case of **State of Bihar Vs. Kameshwar Prasad Singh (2000) 9 SCC 94**, this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in kind by the Court while deciding such applications. In the case of **Ramlal and others vs. Rewa Coalfields Ltd., AIR 1962 SC 361**, the Hon'ble Supreme Court took the view:*

7...In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and

*admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in **Krishna Vs. Chathappan**, ILR 13 Mad. 269. It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to require 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....*

7. A glance at the aforesaid paragraphs reveals that 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 scuttle away that right on the mere asking of the applicant, especially when the delay is a direct result of default, inaction or negligence of that party.

8. In another case captioned as 'P.K. Ramachandran vs. State of Kerala, AIR 1998 SC 2276' in para No.6, Hon'ble Apex Court observed 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.”

9. Similarly, in case ‘G. Ramegowda vs. Special Land Acquisition Officers, (1998) 2 SCC 142, the Hon’ble Apex Court has laid down that the expression 'sufficient cause' occurring in Section 5 of the Limitation Act, 1963 should receive a liberal construction so as to advance substantial justice but not where gross negligence or deliberate inaction or lack of bona fide is imputable to the party seeking condonation of delay.

10. Reverting to the facts of the case in hand, the decree was passed on February 11, 2014 and an appeal was preferred on October 21, 2015 i.e. after a delay of 708 days. There is no evidence what to talk of any cogent or convincing evidence to prove any sufficient cause for the delay of 708 days in filing the appeal. An appeal was preferred before the lower appellate court by Mohinder Kumar-petitioner through Jaspreet Singh as attorney holder, who appeared in the witness box to explain the delay as well as the sufficient cause. He furnished his affidavit which was treated as

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his examination-in-chief, but he never presented himself for the purposes of his cross-examination. Without his cross-examination, the evidence on behalf of the petitioner was closed meaning thereby that there was no evidence before the lower appellate court either to explain the delay of 708 days or to prove that there was sufficient cause on account of which the petitioner could not prefer an appeal within the prescribed period of limitation. Thus, it has been rightly observed by the lower appellate court while passing the impugned order that petitioner has failed to convince the court that he had a sufficient cause which prevented him for preferring an appeal within a period of limitation. Here it would also be pertinent to mention that none of the documents alleged to have been handed over to his counsel, who is stated to have been taken away by nature, has seen the light of the day. It has also been rightly observed by the lower appellate court that the testimony of GPA Jaspreet Singh cannot be read into evidence as his statement is incomplete.

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

12. Accordingly, instant petition being devoid of merit is dismissed.

April 20, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No