

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

C.R. No. 2886 of 2014

Date of Decision:- 04.05.2017

Babu Ram

....Petitioner

vs.

Rajesh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rakesh Gupta, Advocate,
for the petitioner.

Mr. V.B. Aggarwal, Advocate,
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed by the petitioner for setting aside impugned judgment dated 22.3.2004 passed by the First Appellate Court whereby the application filed under Section 5 of the Limitation Act has been dismissed along with the appeal.

Briefly, the facts of the case as made out in the present revision petition are that plaintiff-respondent Rajesh filed a suit for recovery of ₹ 2,40,000/- against defendant-petitioner on the ground that defendant borrowed a sum of ₹ 2,40,000/- from plaintiff on 20.7.2006 in cash on monthly interest @ 1% per month. A pronote and receipt was duly executed in favour of the plaintiff which was signed by the defendant in the presence

of witnesses. It was agreed by defendant that he will return the principal amount along with interest but he failed to return the borrowed amount along with interest despite repeated requests.

After issuance of notice, suit was contested by filing written statement wherein certain objections were raised. However, the suit of plaintiff was decreed in his favour by the trial Court on 21.09.2013 and he was held entitled to recover a sum of ₹ 2,40,000/- from defendant along with interest @ 6% per annum w.e.f. 20.7.2006 till actual realization.

Defendant-petitioner challenged the above-said judgment and decree dated 21.09.2013 passed by the trial Court by way of filing appeal before the District Judge, Kaithal. There was delay of about 2 months and 24 days in filing the appeal. So, the application for condonation of delay was rejected. Accordingly, the appeal filed by the defendant-petitioner was also dismissed vide judgment dated 22.3.2014.

Aggrieved by the aforesaid judgment passed by the First Appellate Court whereby application filed under Section 5 of the Limitation Act along with the appeal was dismissed, the defendant-petitioner filed the present revision petition.

Learned counsel for the petitioner submits that the application as well as appeal were dismissed only on technical ground of delay of 84 days in filing of the appeal, whereas, the appeal was sound on merits but the same has not been taken into consideration. Learned counsel for the petitioner also submits that the application was drafted by the Lawyer and in case it was not properly drafted as exact dates of knowledge were not mentioned, its dismissal has ultimately caused prejudice to the petitioner.

At the end, learned counsel for the petitioner contends that the delay may be condoned and appeal be remanded for hearing on merits. Learned counsel for the petitioner has also relied upon the judgment passed by Hon'ble the Apex Court in **Ratan Singh vs. Vijay Singh and others**, AIR 2001 Supreme Court 279 and the judgments passed by this Court in **Shree Sumer Cotton Mills vs. Firm Gupta Cotton Company and others**, 2005(2) RCR (Civil) 682 and **Des Raj vs. Om Parkash and Bidar Lal**, 1985(2) PLR 293 as well as a judgment of Karnataka High Court rendered in **The Commissioner, Hubli-Dharwad Municipal Corporation vs. Shrishail and others**, AIR 2004 Karnataka 75 in support of his contentions.

Learned counsel for the plaintiff-respondent submits that a detailed and well reasoned judgment had been passed by the trial Court and thereafter unexplained delay has occurred in filing of the appeal and, therefore, the application as well as the appeal were dismissed. Learned counsel for the respondent has also relied upon the judgment of Hon'ble the Apex Court passed in case **Shyam Sunder Sharma vs. Pannalal Jaiswal and others**, (2005) 1 SCC 436 and judgment rendered by this Court in **Inder Kumar @ Inder Pal vs. Ram Bir**, C.R. No. 1155 of 2012 decided on 22.1.2015.

Heard arguments of learned counsel for the parties and have also perused the judgments of both the Courts below as well as other documents available on the file.

Filing of suit for recovery, decretal thereof and thereafter filing of appeal by defendant and dismissal thereof are not disputed. The

appeal was filed along with an application for condonation of delay of 2 months and 24 days in filing the appeal. The application for condonation of delay has been dismissed on the ground that no reason had been assigned by the defendant as to why he kept silent for such a long period. The findings recorded by the lower Appellate Court are reproduced as under:-

“16. Coming to the present case, no reason has been assigned by the applicant-defendant as to why he kept silent for about two months and 24 days. There is no plea as to what prevented him from filing the appeal in time except the plea that he is an illiterate. It is no ground much less sufficient ground. A man may be an illiterate but can be smart enough at the same time. The defendant claimed him an agriculturist and is a business man, who sells his crops in the market. He cannot be said to be a novice and simpleton. The copy of judgment and decree shows that he fought the suit. It can be expected that on decree of suit against him, his counsel must have advised him to file appeal, if not satisfied with the impugned judgment and decree. In the application he stated that he came to know about the judgment and decree dated 21.9.2013 on receiving summons. Again, no date is given when did he received the alleged summons and for what he received the summons. The decision is rendered in presence of his counsel. It can be

reasonably assumed that decision was communicated to him by his counsel. Further, it is no case pleaded that his counsel did not intimate the decision. Thus, the plea that he came to know about the decision on receiving summons appear not genuine at all but a crafted thought. No sufficient reason or just cause has been shown as to what kept him silent till filing of appeal. Law of limitation is rigorous in appeals. It asks for explanation for the delay.

17. Thus, the act and conduct of applicant-defendant as discussed above, does not appear clear and above board, rather from the pleaded version it is made out that the applicant-appellant took a false plea and did not bother to file appeal within limitation. There is total lack of inaction on the part of applicant, and the reasons so pleaded do not appear genuine and bonafide and do not inspire confidence of the court. The applicant-appellant, thus, failed to show a just and sufficient cause and proper reasons, for condoning the delay. Thus, there exists no ground for adopting a liberal approach in favour of the applicant, in condoning the delay in filing the appeal. Rather, it has been held in various judicial pronouncements that when sufficient and proper reasons are not assigned for delay, the court must adopt stern attitude and refuse relief. In face of the conduct of the

appellant, the case law cited by him failed to advance his cause. In authority **Dilbagh (supra)**, in an appeal against the LAC award, an application for condonation of delay was rejected. It was held that when case involve deprivation of source of livelihood of a peasant, liberal approach be adopted. Here, is not a case of deprivation of livelihood. In authorities titled **Harbans Singh & Pawan Kumar (supra)**, it was held that where conduct is not malafide, liberal approach be adopted. Similarly, in authority, **Ram Nath Sao (supra)** it was held that when there is no inaction or want of bonafide, delay should be condoned.”

A perusal of findings recorded by the lower Appellate Court shows that without considering the merits of the appeal as well as the ground taken by the defendant in the application for condonation of delay, the same has been dismissed only on the ground that no sufficient cause and proper reasons for condoning the delay have been made out. Only it is mentioned that application for condonation of delay has been dismissed, the appeal was also dismissed with costs being time barred. The reason for dismissal of appeal is mentioned in para no. 18 of the application which is reproduced as under:-

“18. As upshot of aforesaid discussions, the application for condonation of delay is hereby dismissed. Consequently, the appeal also stands dismissed with costs, being time barred. Memo of costs be prepared

accordingly.”

Notice of motion was issued in the case on 01.05.2014 and thereafter a preliminary objection was raised by learned counsel appearing for the respondent that the present revision petition is not maintainable in the circumstances of the present case as remedy was to file the regular second appeal and not the revision petition. He has placed reliance upon a judgment of Hon'ble the Apex Court passed in **Shyam Sunder Sharma's case (supra)** wherein it was held that an appeal is filed along with an application for condoning the delay in filing appeal and when it is dismissed on refusal to condone the delay would nevertheless be considered a decision in the appeal and, therefore, regular second appeal was maintainable.

Similar issue was there before the Division Bench of this Court in case **Des Raj's case (supra)**, wherein it was held that the appeal was maintainable against a decree and in case the application for condonation of delay was dismissed and appeal was also dismissed without passing any decree, then appeal was not maintainable and only the revision petition was maintainable.

Similar view was taken by the Karnataka High Court in **Shrishail and others' case (supra)** as well as judgment of this Court in **Shree Sumer Cotton Mills's case (supra)**. In all the above-said judgments, it was held that the appeal is maintainable against decree only but in the present case no decree was passed and, therefore, only the revision is maintainable.

Now, the question for consideration before this Court is as to whether the main appeal can be dismissed only on the ground of rejection of

application for condonation of delay and that too without giving any specific finding and without considering the averments made in the application as well as in the grounds of appeal on merits.

In the present case, impugned judgment and decree was passed on 21.9.2013 by the trial Court and certified copy of said judgment was applied on 23.9.2013 which was prepared and delivered on 30.9.2013. The appeal was filed on 15.1.2014 i.e. after a delay of about 2 months and 24 days along with application for condonation of delay. While dismissing the application, simply it has been mentioned that Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, *inter alia*, that any appeal may be admitted after period of limitation prescribed, therefore, when the appellant satisfied the Court that he had sufficient cause for not preferring the appeal within period of limitation. It has been mentioned that no reason had been assigned by the applicant-appellant as to why he remained silent for 2 months and 24 days. An observation has also been made without commenting anything on the merits that "A man may be an illiterate but can be smart enough at the same time." The observations made in para nos. 16 and 17 of the judgment of First Appellate Court seems to have been made by not considering the ground for condonation of delay but in general as to what is expected from an illiterate person. The observations have been made on the basis of presumption and not by considering the grounds mentioned in the application. It has also been observed that no sufficient reason or just cause has been shown as to what kept the petitioner silent till filing of the appeal and **law of limitation is rigorous in appeals**. Thereafter, only

on the basis of rejection of the application, the appeal has also been dismissed.

There is a difference between “good cause” and a “sufficient cause”. Every sufficient cause can be a good cause and vice versa. But in case any difference exists, it can only be that the requirement of good cause which is complied with on a lesser degree of proof i.e. of “sufficient cause”. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished can be decided on the facts of a particular case and, as such, no straitjacket formula is possible.

It is also settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same. The Statute of Limitation is founded on public policy, its aim is to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. Hon'ble the Apex Court in case of **State of Nagaland vs. Lipok A.O. and others**, 2012 (5) SCC 157 has held in paragraphs 24 and 25, which are reproduced as under:-

"24. What colour the expression "sufficient cause" would

get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In case involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest".

It has been held in catena of judgments by this Court as well as by Hon'ble the Apex Court that in case any appeal has been filed beyond period of limitation, the Court has to consider the appeal on its own merits and if the case is meritorious one, then delay should be ignored. In case, there is sufficient reason in filing the appeal with delay, then it has to be

condoned and appeal has to be decided on merits and not to be dismissed on technical ground of limitation.

Hon'ble the Apex Court has in case titled as **Executive Officer, Antiyur Town Panchayat vs. G. Arumugam (deceased) by LRs, 2015 (1) WLC(SC) 443** has held that Court must take the liberal view in larger public interest even in case where huge delay is there.

In another judgment of Hon'ble the Apex Court rendered in **Lipok AO's case (supra)**, it has been held that the Court must always take a justice oriented approach while considering the application for condonation of delay. Similar view has been taken by Hon'ble the Apex Court in judgments passed in **B. Madhuri Goud vs. B. Damodar Reddy, 2012 (12) SCC 693, Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, AIR 1987 (SC) 1353**, a judgment of Karnataka High Court in **B.R. Mallikarjuna vs. Smt. D. Geetha, 2016 (1) KantLJ 520** and a judgment of Bombay High Court passed in **Yuvraj Vithu Sutar vs. Dinkar Lahu Sutar, 2012(2) BCR 119**.

In view of facts and law position as discussed above, there is merit in the contentions raised by learned counsel for the petitioner and the present revision petition is allowed. The impugned judgment dated 22.3.2014 passed by the Appellate Court is set aside.

However, the case is remanded to the Lower Appellate Court to reconsider the application for condonation of delay on the basis of averments made here-in-above as well as the merits of the appeal and pass order afresh after hearing both the parties within a period of three months from the date of receipt of certified copy of this order.

It is also made clear that the Lower Appellate Court shall not have any influence by any observation made herein-above while deciding the application and appeal.

May 04, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes