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

**Civil Revision No.4124 of 2016(O&M)
Date of Decision: 11.09.2017**

M/s BCH ELECTRICS LTD.

.....Petitioner

Vs

SHREENATH ENTERPRISES & ANR.

....Respondents

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

Present:Mr. Ajit Pal Singh Pakka, Advocate for
Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Ajay Ghangas, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 23.03.2016 passed by the Addl. District Judge, Faridabad whereby appeal filed by the petitioner against the order dated 27.02.2015 passed by the Civil Judge (Jr. Divn.) Faridabad was dismissed along with application under Section 5 of the Limitation Act (hereinafter to be referred to as 'the Act').

[2]. Brief facts are that vide order dated 08.05.2016, the petitioner was proceeded against *ex parte* before the trial Court

in a suit for recovery filed by the plaintiff/respondent. Ultimately suit was decreed *ex parte* vide judgment and decree dated 10.11.2008 passed by the Addl. Civil Judge (Sr. Divn.) Faridabad. An application filed under Order 9 Rule 13 CPC by the judgment-debtor/petitioner on 31.03.2009 was dismissed by the trial Court on 27.02.2015.

[3]. An appeal was preferred before the lower Appellate Court on 12.05.2015 along with application for condonation of delay. According to the applicant/petitioner there was delay of 17 days in filing the appeal. The lower Appellate Court assessed the delay to be of 36 days in filing the appeal and observed that the applicant/petitioner has not given any explanation about the delay in mentioning the delay of 17 days in place of 36 days except the plea of typographical mistake taken during course of argument. The lower Appellate Court did not consider the ground mentioned by the applicant-petitioner for condonation of delay and dismissed the application under Section 5 of the Act and as a consequence thereof the appeal was also dismissed vide judgment dated 23.03.2016.

[4]. I have considered the submissions made by learned counsel for the parties at the bar.

[5]. The appeal ought to have been filed on or before

29.03.2015 i.e. within a period of 30 days. The petitioner pleaded that he came to know about the decision only on 13.04.2015 and on application, the certified copy of the order was received by him only on 05.05.2015 and, therefore, filing of the appeal on 12.05.2015 was an act of *bona fide* on behalf of the petitioner.

[6]. Evidently, the application for obtaining certified copy of the order was moved on 05.03.2015 and the same was prepared and delivered on 12.03.2015. The time spent in obtaining the certified copy is to be deducted and on such deduction, the appeal should have been filed on or before 06.04.2015. The filing of appeal on 12.05.2015/13.05.2015 was delayed by 36 days as per observation made by the lower Appellate Court.

[7]. The applicant/petitioner has admitted that the mentioning of days of which the appeal was barred was on account of clerical omission. In case of **Collector Land Acquisition vs. Mst. Katiji and others, AIR 1987 SC 1353** the Hon'ble Apex Court while considering the application for condonation of delay laid down certain parameters to show that the refusal to condone the delay may result in throwing out a meritorious matter on the threshold of technicality. There cannot be any presumption that the delay has occasioned by means of

any deliberate act on the part of the litigant. The discretion has to be exercised while condoning the delay in a judicious manner and not arbitrarily. A sufficient cause should receive liberal construction so as to advance the substantial cause of justice. Ordinarily the delay in filing the appeal should be condoned when there is no ill-will or *mala fide* is proved. The ratio laid down in **Sandhya Rani Sarkar vs. Sudha Rani Debi, AIR 1978 SC 537** and **Mahabir Singh vs. Chief of Army Staff, 1990 (Supp) AIR SC 89** can be relied on this proposition.

[8]. 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 petitioner 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.

[9]. 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 consider the aspect of delay favourable in the facts and circumstances of the present case.

[10]. In view of aforesaid facts, I am of the view that the lower Appellate Court has not granted the indulgence in a judicious manner. The delay of 36 days ought to have been condoned and the appeal should have been heard on merits. Consequently, the impugned order dated 23.03.2016 passed by the Addl. District Judge, Faridabad is hereby set aside and the delay of 36 days in filing the appeal is condoned. Revision petition is allowed, however subject to payment of cost of Rs.10,000/- to be paid to the respondents.

[11]. Accordingly, the case is remanded to the lower Appellate Court with a direction to decide the appeal on merits in accordance with law. Both the parties are directed to appear before the lower Appellate Court on 03.10.2017. The payment of cost shall be the condition precedent for granting indulgence by the lower Appellate Court in the aforesaid context.

September 11, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No