

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

CR No.4896 of 2016

Date of Decision: 20.07.2017

Guru Jambheshwar University
Versus

.....Petitioner

Lovely Khurana

... Respondent

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

Present:Mr. Vishal Garg, Advocate
for the petitioner.

Mr. Vivek Sheoran, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. This is a revision petition filed by the petitioner against the order dated 05.05.2016 passed by Additional District Judge, Hisar whereby the application filed by the petitioner under Section 5 of the Limitation Act for condonation of delay of 27 days was declined.

[2]. The suit of the plaintiff/respondent was decreed by Civil Judge (Junior Division), Hisar vide judgment and decree dated 30.05.2014. An appeal was filed against the above said judgment and decree. An application under Section 5 of the Limitation Act for condonation of delay of 27 days in filing the appeal was also filed (concededly, there is a clerical error in mentioning the delay of 1 month and 27 days in the order). The suit of the plaintiff was to the effect that a declaration be granted to declare one letter issued by the petitioner/University as

illegal, null and void and the plaintiff/respondent prayed that she is entitled to remain admitted in M.Sc. II year in CT subject for the year 2013-14 with a consequential relief of permanent injunction directing the defendant/petitioner to restore her admission and allowing her to appear in the examination. She also prayed for restraint from creating any hindrance in the routine of the plaintiff to appear in the final examination of the course.

[3]. Vide judgment and decree dated 30.05.2014, the trial Court decreed the suit. The appeal filed by the petitioner was barred by limitation of 27 days and the same was claimed to be not intentional, rather the same was on account of some omission on the part of the counsel as the counsel applied for certified copy belatedly and the same ultimately resulted in 27 days delay in filing the appeal. In the application for condonation of delay, the petitioner has mentioned that the counsel for the petitioner inadvertently did not obtain the certified copy of the impugned judgment and decree within limitation.

[4]. In the pleadings of the revision petition, the petitioner has mentioned in para No.5-A that delay was only of 20 days as the judgment and decree was passed on 30.05.2014 and the same was applied on 03.06.2014. The copy was prepared on 10.06.2014 and the lower Appellate Court has not given the

benefit of aforesaid 7 days consumed in the preparation of the certified copy.

[5]. As against this, learned counsel for the respondent submitted that as per para No.9 of the order passed by the Additional District Judge, Hisar, the certified copy was applied only on 01.07.2014 and therefore, no indulgence can be granted in favour of the petitioner for condonation of delay.

[6]. There is some discrepancy in respect of date of filing of application for obtaining certified copy. From the seal appearing on the certified copy of order dated 30.05.2014 passed by Civil Judge (Junior Division), Hisar, it is apparent that application for obtaining certified copy was moved on 03.06.2014 and the same was prepared on 10.06.2014. In this way, period of 7 days was consumed by the Copying Branch in preparing the certified copy of the order, which was ultimately delivered on 30.06.2014 itself. From the date of passing of judgment and decree on 30.05.2014, the limitation for filing the appeal was upto 30.06.2014 without deducting the time spent for obtaining certified copy. If benefit of 7 days is to be calculated, then the limitation would go upto 07.07.2014. The appeal was filed on 28.07.2014 and therefore, it was barred by limitation. Apparently, there is some omission on the part of the office of learned counsel for filing the application for obtaining certified

copy of the order.

[7]. Learned counsel for the petitioner submitted that negligence on the part of the University is not so gross and deliberate that the *bona fide* litigation can be throttled on that score. The Court is always to take liberal view if the delay is not on account of deliberate inaction or lack of *bona fide* on the part of the petitioner. The Court should adopt a liberal construction of the provision so as to advance substantial cause of justice, instead of dismissing the case on technical grounds.

[8]. Looking to the days with which the appeal is barred, this Court is of the view that even if, there are some omission on the part of the petitioner/University, the delay cannot be termed as inordinate delay, 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**, learned counsel for the petitioner submitted that the delay of 27 days (as per calculation 21 days) be condoned.

[10]. As against this, learned counsel for the respondent vehemently opposed the prayer and submitted that as per

application under Section 5 of the Limitation Act, no reasons have come forth in para No.3 of the application. The alleged inordinate error on the part of the counsel for the petitioner cannot be taken to be a sufficient ground for condonation of delay even of 21 days. Learned counsel relied upon **Lanka Venkateshwarlu (Dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, wherein there was a delay of 3703 days in bringing on record legal representatives of deceased respondent. It was held in the aforesaid context that delay was due to inefficiency, ineptitude and negligence of Government Pleader concerned. Looking to the facts of the aforesaid case, the delay of 3703 days was so inordinate that the Court deprecated the conduct of the counsel and did not exercise the discretion to condone the delay. The principle is based on reasonable exercise of discretionary power. The discretionary power has to be exercised on sound and judicial principles and in a systematic manner. The liberal approach should not override the substantial cause of limitation and vice versa i.e. a cause of justice should not be thrown out at the threshold of technicality.

[11]. In the instant case, the delay is not such, which may deprive the petitioner from exercise of discretion in its favour for condonation of delay. The delay is on account of non-filing of

application for obtaining certified copy of the order. It is a settled principle that the cause of justice should not be thrown at the verge of technicalities. The delay is not such that the same should be viewed from the angle of any third party interest which has not been created in this case.

[12]. In view of facts and circumstances of the case, I deem it appropriate to set aside the order dated 05.05.2016 passed by Additional District Judge, Hisar. Consequently, this revision petition is accepted. Additional District Judge, Hisar is directed to proceed with the appeal on merits.

[13]. Both the parties are directed to appear before the lower Appellate Court on 09.08.2017.

(RAJ MOHAN SINGH)
JUDGE

20.07.2017

prince

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No