

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5833 of 2017(O&M)
Date of Decision:29.9.2017

State of Punjab and others

---Petitioners

vs.

HC/PR Gurdip Singh No. 7/972 and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Pawan Sharda, Deputy Advocate General, Punjab,
for the petitioners

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 12.1.2015 (Annexure P-1) whereby application for condonation of delay under Section 5 of the Limitation Act, 1963 (in short “the Act”) in filing the appeal has been dismissed by the Additional District Judge, Jalandhar.

A brief backdrop of the case is that HC Gurdip Singh and others filed a civil suit in July 2004 claiming certain service benefits that came to be decreed by the trial court vide judgment and decree dated 26.11.2009 (Annexure P-3). Against the decree passed by the trial court, the petitioners filed the first appeal before the Court of District Judge, Jalandhar. Alongwith the appeal, an application for condonation of delay of 971 days in filing the appeal was filed. After seeking reply of the respondents-decree holders, the application for condonation of delay was

dismissed and as a natural consequence, the appeal was dismissed being barred by limitation.

The sole submission made by counsel for the petitioners is that due to official process undertaken to take a final call for filing the appeal against the decree passed by the trial court, there was delay in filing the appeal but the same was neither intentional nor mala fide. It is further argued that the Court is required to adopt a liberal approach while deciding the question of condonation of delay so that meritorious claims are not rejected at the threshold on technical considerations or due to procedural lapse. According to counsel, Hon'ble the Supreme Court of India in **State of Karnataka vs. Y. Moideen Kunhi (dead) by Lrs. and others 2010 (8) RCR (Civil) 2841** condoned delay of 6500 days in filing the Special Leave Petition, therefore, the application filed by the petitioners for condoning delay of 971 days may be allowed and the respondents can well be compensated with costs for delay attributable to the petitioners.

I have heard counsel for the petitioners, perused the paper book particularly various annexures appended with the petition.

Apart from the fact that the petition has been filed after inordinate delay of 801 days, the petition is devoid of merit and liable to be rejected.

The judgment and decree passed by the trial court, after due contest by the petitioners, came to be challenged before the first Appellate Court after delay of 971 days. The Appellate Court, on the basis of pleadings of the parties framed issues, permitted the parties to adduce evidence in support of their respective contentions and eventually recorded

findings on issue Nos. 1 and 2 against the petitioners negating their plea that there are sufficient grounds for condoning delay of 971 days in filing the appeal. For this purpose, the Court has taken into consideration judgments of Hon'ble the Supreme Court of India **State (NCT of Delhi) vs. Ahmed Jaan 2008 (11) SCALE 455, State of UP through Executive Engineer and another vs. Amar Nath Yadav 2014(1) CCC 690** and **Office of the Chief Post Master General and others vs. Living Media India Limited and another 2012 (2) CCC 001.**

Counsel for the petitioners has not made any submissions to challenge correctness of factual findings recorded by the Court below. He has also not disputed the observations recorded by Hon'ble the Apex Court in the recent judgment **Office of the Chief Post Master General and others' case (supra)** wherein it was held that plea for condonation of delay on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. Hon'ble the Supreme Court way back in the early 60's in **Ramlal and others vs. Rewa Coalfields Limited AIR 1962 SC 361** has held that even if sufficient cause has been shown, parties are not entitled to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the Court by Section 5 of the Act. If sufficient cause is not proved, nothing further has to be done, the application for condonation delay has to be dismissed on that ground only. If sufficient cause has been shown then the Court has to enquire 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 but the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

In the case at hand, counsel has failed to point out any materials on record constituting sufficient ground for condoning huge delay of almost three years. The petitioners appear to have filed an affidavit of Sh. Jaskaran Singh, Assistant Inspector General of Police in respect of their plea for condoning delay of 971 days. Perusal of the affidavit would reveal that limitation for filing the appeal had already expired by the time the Director Prosecution and Litigation, Punjab, Chandigarh sent the judgment/decreed to the Deputy Secretary, Government of Punjab, Department of Home Affairs and Justice vide letter dated 1.2.2010. Despite the fact that the stipulated period of limitation had already expired by the time the Department of Home Affairs and Justice received a communication from the Director Prosecution, the Director General of Police, Armed and other authorities involved in the process of taking a final decision in the matter took more than two years to finally take a decision to file the appeal and issuance of necessary instructions alongwith sanction to the Director, Prosecution and Litigation, Punjab. Though there is no dispute about settled position in law that the Court needs to adopt a liberal approach while deciding the question of condonation of delay, still reading of the aforementioned affidavit, in my considered opinion, by no terms can be said to be constituting a sufficient ground for allowing indulgence of the

Court in exercise of its discretionary jurisdiction under Section 5 of the Act.

So far as the judgment relied upon by counsel for the petitioners, in **State of Karnataka vs. Y. Moideen Kunhi (dead) by Lrs. and others' case (supra)**, Hon'ble the Supreme Court in view of importance of questions of law involved coupled with extent of land being more than 4000 acres out of which nearly 3500 acres constituted forest land, decided to condone delay subject to payment of exemplary costs of Rs. 10 lakhs. Counsel has failed to advance any meaningful arguments as to how the case in hand can be equated with the case involved in the Special Leave Petition filed in the Supreme Court.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed. However, the State shall initiate action against persons responsible for delay in filing the appeal and recover the financial liability fastened upon the State exchequer as a consequence of decree from the defaulting officers/officials.

(Rekha Mittal)
Judge

29.9.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No