

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

C.R. No. 7700 of 2017

Date of Decision : 20.11.2017

HARJINDER SINGH

... Petitioner

Versus

M/S SAI MOTORS AND ORS

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

B.S.WALIA, JUDGE (ORAL)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 21.08.2017 (Annexure P-1) passed by the learned Additional District Judge, Gurdaspur whereby the application for condonation of delay of 370 days in late filing of the appeal was dismissed and consequently, the appeal.

2. Brief facts of the case leading to the filing of the revision petition are that a suit for permanent injunction was filed by the respondents-plaintiffs (hereinafter referred to as the respondents) for restraining defendant No.2-petitioner (hereinafter referred to as the petitioner) as well as defendant No.1 from interfering in the peaceful possession of the respondents as tenant over the building marked as ABCD and its basement EFGH as per details contained in Annexure P-4.

3. Defence of defendant No.1 was struck off on 24.09.2013 on account of failure to file the written statement. However, suit was contested by the petitioner by taking up the stand before the learned trial Court that the

respondents were not in possession of the entire portion in respect of which the permanent injunction had been sought and they were only in possession of the front portion and basement, whereas the back portion of the building was in the possession of the petitioner.

4. The petitioner was examined as DW-1 whereafter he went to Assam in connection with business, allegedly after informing his counsel who is claimed to have told him that his presence was no longer required and he would inform him as and when his presence was required. Learned counsel states that in the aforementioned circumstances, the petitioner went to Assam in January, 2015 and remained there for a period of 13 months and returned to Gurdaspur on 20.02.2016 and on contacting his counsel on 22.02.2016 learnt that the suit had been decreed on 07.02.2015. In the circumstances, the petitioner applied for a certified copy of the judgment and decree dated 07.02.2015 on 23.02.2016. The same was prepared and delivered to the petitioner on 01.03.2016. Thereafter, the petitioner filed an appeal on 23.03.2016 (Annexure P-3) along with an application for condonation of delay of 370 days in late filing of appeal i.e. Annexure P-2 taking up the plea as has been noted above.

5. Leaned counsel contends that the learned Lower Appellate Court dismissed the application for condonation of delay of 370 days in late filing of the appeal, consequently, the appeal without taking into account that sufficient cause was made out for not filing the appeal within time. Learned counsel relied upon the decision of the Hon'ble Supreme Court in '**Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others,**' 2013 (12) SCC 649, in support of the plea that the application for condonation of delay ought to have been allowed by the

learned Lower Appellate Court.

6. Learned counsel contended that the Hon'ble Supreme Court had held in the aforementioned decision that there should be a liberal, justice-oriented approach while dealing with an application for condonation of delay and in the circumstances, the learned Lower Appellate Court ought to have condoned the delay.

7. I have considered the submissions of learned counsel for the petitioner and am unable to agree with the same. Admittedly while dealing with an application for condonation of delay, the Courts are required to adopt a liberal, pragmatic and justice-oriented approach. However as held by the Hon'ble Supreme Court in **Esha Bhattacharjee's case** (supra) a distinction has to be drawn between inordinate delay and delay of short duration or of a few days, and while in the case of inordinate delay, doctrine of prejudice would be attracted, in case of delay of short duration or of few days, the doctrine of prejudice may not be attracted and it is only in the case of inordinate delay that a strict approach is warranted whereas delay of short duration or of few days calls for a liberal delineation.

8. The Hon'ble Supreme Court also held in the aforementioned decision that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration and the Courts are required to weigh the scales of balance of justice in respect of the parties and the said principle cannot be given a total go by in the name of liberal approach. If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

9. Viewed from the aforementioned background, it is apparent that

there was complete want of due care and attention on the part of the petitioner. Assuming that the counsel conducting the case on behalf of the petitioner in the trial Court had told him that his presence was not required in the case and he would inform him whenever his presence was required, the same did not give a licence to the petitioner to take things for granted and not to have remained in touch with his counsel.

10. Admittedly, evidence of the petitioner was recorded as DW-1 in January 2015, whereafter, he allegedly proceeded to Assam in connection with business and returned only on 20.02.2016 to Gurdaspur after a gap of 13 months. There is not even a whisper that during this period of 13 months, the petitioner ever contacted his counsel to ascertain the status of the case or the outcome of the suit filed against him. So much so there is not even a whisper of the petitioner having even bothered to call up his counsel to ascertain the status of the case. In today's world with easy access on account of availability of internet and mobile telecommunication facilities, it is unbelievable that the petitioner was unable to contact his counsel. The same only reflects total absence of due care and attention. Accordingly that what is not done with due care and attention cannot be said to be done in good faith in terms of the definition as given in Section 2 (H) of the Limitation Act. Consequently, the inaction of the petitioner cannot by any stretch of imagination constitute sufficient cause. Reference in this connection is made to the decision of this Court as well as the Hon'ble Supreme Court in :-

'Bhim and another Vs. Harish Chander', 1972 PLR 33,

wherein this Court held as under:

“In this suit involving a question of limitation, we shall have to adopt the definition of ‘good faith’ as given

in section 2(h) of Limitation Act, 1963, rather than the definition of the expression given in Section 22 of the General Clauses Act. According to the definition given in the Limitation Act, nothing shall be deemed to be done in good faith which is not done with due care and attention”.

And in '**Balwant Singh (deed) Vs. Jagdish Singh and others 2010**',
AIR (SC) 3043 wherein the Hon'ble Supreme Court held as under:

“The word `sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention”.

11. Vide order dated 08.11.2017 this Court had recorded that after arguing at length and failing to convince the Court with regard to sufficient cause having been made out, learned counsel for the petitioner had requested for time to file an affidavit of the counsel who had promised to intimate the petitioner about the status of the case as also the action if any which the petitioner had taken against said counsel for failure to keep him informed of the status of the case. No such affidavit has been filed nor has action if any taken by the petitioner against the counsel for failure to intimate him, has been brought to the notice of this Court except for stating that the counsel refused to give any affidavit.

12. Sufficient cause was not established by the petitioner either before the learned lower Appellate Court nor before this Court for not filing the appeal within the stipulated period of time. In the circumstances, I am of the considered view that the order passed by the learned Additional District Judge, Gurdaspur dismissing the application for condonation of delay of 370 days in late filing of the appeal and consequently the appeal has been passed in accordance with law. Accordingly, order dated 21.08.2017 (Annexure P-1) passed by the learned Additional District Judge, Gurdaspur does not call for any interference.

13. Resultantly, the appeal is dismissed *in limine*.

(B.S.WALIA)
JUDGE

November 20, 2017

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