

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1847 of 1991

Date of Decision: 30.03.2017

Baldev Singh

... Appellant

Versus

The State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vipin Mahajan, Advocate,
for the appellant.

Mr. B.M. Vinayak, DAG, Punjab.

RAJIV NARAIN RAINA, J.

1. This appeal was admitted by passing the following order on December 13, 1991:-

“Learned counsel submits that the respondent-State filed a belated appeal before the first appellate Court and along with the appeal, an application under Section 5 of the Limitation Act was also filed. The application has not been disposed of. Instead the appeal on merits has been disposed of. Till the disposal of the application under Section 5 of the Limitation Act, the first appellate Court could not entertain the appeal.

Notice. Ad-interim stay order dated Sept.6, 1991 to continue. Hearing of the appeal be expedited preferably within a year.”

2. There was a stay on the judgment and decree of the lower Appellate Court. The appellant plaintiff had succeeded in the suit and the order of dismissal was set aside. The State filed an appeal with an

application under Section 5 of the Limitation Act to condone the delay in filing the appeal.

3. Without paying attention to the application under Section 5 of the Limitation Act the lower Appellate Court proceeded to reverse the judgment of the trial Court which led to revival of the order of dismissal. The present position as the case comes up for regular hearing is that as a result of the stay order the plaintiff appellant continued in service and retired about two years ago. After passage of three decades it would be wholly inequitable I think to consider the first appeal on merits of the dismissal order and, therefore, the best order that appears which ought to be passed in by the *fait accompli* created by the interim order is that the application under Section 5 of the Limitation Act presented by the State in first appeal is left in limbo. Without condoning delay the lower court could not have decided the case on merits.

4. The request of the learned counsel appearing for the State of Punjab for remand may have been a good argument to remand the case twenty six years ago but if ordered today will inevitably lead to further injustice which will revive hearing after almost three decades.

5. I have examined the matter on merits as well and as far as application under Section 5 is concerned and read the contents and find that the usual stock defences have been taken to explain delay by office red tape and of pushing files from the one desk to the other in the Government department in the process of making up mind to file appeal. These type of reasons have been castigated by the Supreme Court in Office of the Chief Post Master General and others v. Living Media India Ltd. and another,

(2012) 3 SCC 563. Hence, the contention is rejected.

6. The interim order, continuing the operation of the order dated September 6, 1991, is made absolute.

7. Accordingly, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court restored.

(RAJIV NARAIN RAINA)
JUDGE

30.03.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*