

In the High Court of Punjab and Haryana at Chandigarh

**CM-6210-CII-2012 IN/AND
F.A.O No. 1515 of 2012
Date of Decision: 15.12.2017**

Neha and another

.....Appellants

Versus

Harbhajan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K.Rana, Advocate
for the appellant.

Mr. R.C.Gupta, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

An appeal has been filed against the award dated 8.5.1997 with the delay of 5292 days. The appeal was filed on 1.2.2012.

Along with the appeal, an application for condonation of delay had been filed and it is necessary to see the grounds disclosed. The appeal was filed only by two of the claimants. The claim petition had been filed by Sita Rani and her three minor children aged 11, 13 and 15 years in October 1996 relating to the death of Shish Pal. The accident occurred on 15.4.1996. Along with Sita Rani, her in-laws were also arrayed as petitioners. The claim petition was allowed on 8.5.1997. The compensation was to be shared by all the petitioners.

Reverting to the facts given in the application. The applicants have averred that they had received the amount of the fixed deposit receipt

technicalities of law and now they had come to know that they can file an appeal, therefore the delay be condoned. Another fact was introduced that Neha was handicapped and Sukant was still going to school. It is on these sketchy facts that the application was filed. An affidavit of Sukant one of the petitioners, was appended and his age was not mentioned in the affidavit or in the application.

The Co-ordinate Bench had directed the counsel for the appellants to place on record the school certificates showing the date of birth as well as the copy of the claim petition as according to him Neha was 11 years and Sukant was 7 years old in 2002.

A perusal of the title shows that Neha was shown to be eight years in 1996 whereas Sukant was shown to be 13 years and the third child was Jitender whose age was shown as 15 years.

The appellants have placed on record copy of the ration card prepared in 2002 and Sukant was shown to be seven years. Finding the anomaly in the age recorded in the claim petition which was 13 years for Sukant, the appellants were asked to place on record the birth certificates and subsequently Annexures A-4 and A-5 were placed on record which showed that Neha's date of birth was 1.4.1987 and Hitender's date of birth was 21.4.1993. The counsel had explained that Hitender was known as Sukant but I find that there is no material or any suggestion that Sukant who was shown to be 13 years old was known as Hitender or that he was born in 1993. If that certificate is to be accepted then Sukant was only three years old when the claim petition was filed. The appellants have not come out clear on this.

The counsel for the applicants-appellants urges that the Apex

Court in ***Dhiraj Singh (D) Tr. Lrs. Etc. versus Haryana State and others Etc. 2015(1) SCC (Civil) 236*** had condoned the delay of 12 years and the Court should be pragmatic and the substantive rights should not be defeated on technical grounds and they were not to benefit by lodging the appeal late. Counsel for the appellants further contends that the applicants-appellants came to know of it only when the amount was deposited in their account and that was in 2012.

The submission on the other hand is that wrong facts are being projected and the insurance company had deposited the amount in 1999 which was withdrawn and the applicants have not placed on record the order passed by the Executing Court which had ordered the amount to be deposited in the fixed deposit. It was urged that there is an inordinate delay and the delay cannot be condoned.

Before we delve into the factual scenario, it is necessary to notice some judgments rendered by the Apex Court.

In ***G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore, JT 1988 (1) SC 524 : (1988) 2 SCC 142*** it was held as under:-

*“The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : **Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd (1962)2 SCR 762; Shakuntala Devi Jain v. Kuntal Kumari, (1969) 1 SCT 1006; Concord of India Insurance Co. Ltd. V. Nirmala Devi (1979) 3 SCR 694; Lala Mata Din v. A. Narayanan, (1970) 2 SCR 90 ; Collector, Land Acquisition v. Katiji etc.** There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its*

counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

In ***Improvement Trust, Ludhiana v. Ujagar Singh and others***, ***JT 2010 (6) SC 205 : (2010) 6 SCC 786***, it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

The principle stated in ***Balwant Singh (dead) v. Jagdish Singh and others***, ***JT 2010 (70 SC 398 : (2010) 8 SCC 685*** would be quite fruitful. In the said case the Court referred to the pronouncements in ***Union of India v. Ram Charan***, ***AIR 1964 SC 215***, ***P.K. Ramachandran v. State of Kerala***, ***JT 1997 (8) SC 189 : (1997) 7 SCC 556*** and ***Katari Suryanarayana v. Koppiseti Subba Rao***, ***JT 2009 (5) SC 283 : (2009) 11 SCC 183*** and stated thus:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite

consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

What constitutes sufficient cause cannot be laid down by hard and fast rules but the discretion given by Section 5 of the Limitation Act can be exercised only when there is sufficient cause and the party has not acted negligently in pursuing their remedies. If there is negligence and gross inaction then there is no reason why the opposite side should be exposed to a time barred appeal.

In the present case, the delay is colossal and sufficient reasons have not been given. The counsel for the insurance company had placed a letter on record to show that the amount had been deposited prior to March 1999 and they had intimated the status of the case to the insurance company and the amount had already been withdrawn. It had rightly been urged that the claimants have not come clean and they have not given their date of births purposely as it would have exposed the real facts. The minors in 1996 were represented by their mother and even their grand parents were parties. Jitender was 15 years old in 1996 and he would have turned 18

prior to the year 2000. As per the age given in the copy of the judgment filed by applicants, Sukant is shown to be 13 years old and he would have turned 18 in 2004 and similarly Neha would have turned 18 in 2007. The limitation would not be extended since the applicants had got the amount transferred in their accounts in 2012. The applicants have been unable to show sufficient cause for condoning the delay of 14½ years. It is a case where the parties had been grossly negligent and there has been inaction on their part and they have been unable to offer any explanation much less a reasonable explanation. The Courts are expected to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the name of liberal approach. The explanation offered is concocted. I find no reasons to condone the delay.

The application as well as the appeal are dismissed.

**(ANITA CHAUDHRY)
JUDGE**

December 15, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes