

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

FAO No.6710 of 2011 (O&M)

Reserved on: 10.01.2017

Decided on : 01.02.2017

Mohinder Pal

... Applicant/Appellant

Versus

General Public and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. S.K. Sharma, Advocate for the applicant-appellant.

Mr. S.S. Khaira, Advocate for respondent No.2.

G.S. Sandhawal, J.

**CM-27207-CII-2011, CM-27208-CII-2011, CM-27209-CII-2011 and
CM-15411-CII-2015**

Vide the abovesaid applications the appellant seeks the condonation of the inordinate delay of 1912/2112 days in re-filing of the present first appeal.

The second application has only been occasioned on account of the fact that the office asked the counsel for the applicant/appellant to file a consolidated application for the delay which was taking place on repeated occasions running over 6 years in point of time.

CM-27209-CII-2011 has also been filed to affix the requisite Court fee as provided under the Punjab and Haryana High Court Rules and Orders.

The appeal filed by the respondent arises out on the ground of probate of Plot No.2077, Sector 37-C, Chandigarh, which has been issued in favour of respondent No.2 on 17.01.2005 who was the applicant/petitioner before the Additional District Judge. The present

applications are a case of apparent misuse of the liberty which was granted time and again for complying with the objections, which have been raised by the office for negligent and casual attitude in dealing with the filing of the appeal.

Counsel for the applicant/appellant has submitted that since the appeal was filed within a period of limitation on 22.03.2005, therefore, it is a matter of right that re-filing as such is to be allowed.

However, for the reasons set down before this Court that the total period provided for the completion of the re-filing process is 40 days under the Rules and in the absence of the any satisfactory explanation as such the present appeal is liable to be dismissed in view of the inordinate delay, which has taken place. Respondent No.2 vide his reply has accordingly objected to the said applications on the ground that no sufficient cause as such has been shown.

The record would go on to show that initially the appeal was filed on 22.03.2005 and the following objections were raised on 02.04.2005:-

“(1) A Stamp Vendor Certificate should be obtained.

(1) Opening sheet is properly filed.

(2) As to how RFA is competent in this case?

(3) Paper-book should be properly arranged.

(4) P/A should be stamped.

(5) Dates regarding memo of parties and grounds of appeal do not tally with the Index.

Any other case Retd. to be refiled within a week.”

Thereafter, the appeal was re-filed only on 16.07.2008 after a period of more than 3 years by mentioning that the Regular First Appeal

is competent under Section 299 of the Indian Succession Act, 1925. The explanation given in the application for delay is that the same had been put in the admitted cases of the High Court and on being located it was re-filed by the Clerk, who has now expired on 16.11.2005. The same was again returned on 25.08.2008 on the ground that the objections raised earlier have not been complied with, the number of the days for which the delay had taken place was not correct and each page of affidavit be got signed. Thereafter, the case was filed for the third time on 19.11.2008 with the endorsement that compliance had been done. It was returned on 12.12.2008 on the ground that objections dated 02.04.2005 still had not been complied with and how the Regular First Appeal was maintainable. The said objections read as under:-

“(1) Objections raised on 2/4/05 have still not complied with.

(2) How RFA is maintainable?

(3) Any other case?”

It is alleged in the application that the case was again put in another brief and while arranging office record the FAO was found. No explanation has been given as to on what account the case was immediately not re-filed, after it was returned by the office, which has been highlighted by the respondent also.

Thereafter, it is alleged that since the case was put in another brief and could not be located and was only filed after on 04.05.2009 for the fourth time. A perusal of the objections raised on 26.05.2009 would go on to show that neither the earlier objections had been complied with and a fresh application was required for condonation of delay and last

pages of the certified copy of the judgment were not forthcoming. The same read as under:-

“(1) Notes dated 02.04.2005 still not complied with.

(2) Fresh application for condonation of delay in re-filing the appeal should be filed.

(3) Complete address of the appellant should be given.

(4) Last pages of the certified copy of judgment are not forthcoming (At Page No.8)

Returned to be complied within a week.”

Resultantly, **CM-27208-CII-2011** dated 04.07.2011 has also been filed for exemption from filing certified copy and permission to produce typed and xerox copy of the judgment under appeal, since the appeal was again misplaced by the counsel and in the interim period had been re-filed only on 17.08.2009 for the 5th time. It was, thereafter, returned on 22.09.2009 with the following objections:-

“(1) Ld. Counsel is requested to come personally in the Registry regarding maintainability of RFA against the order of Shri R.S. Baswana, ADJ and u/s 276 of the Indian Succession Act, 1936.

(2) Stamp vendor stamp be affixed.

(3) POA be stamped sufficiently.

(4) CM u/s 149 CPC be filed after complying with the abovesaid objections.

(5) Note No.3 and 4 dated 26/5/09 still not complied with.

(6) Opening sheet be filed completely.

(7) Each page of affidavit be signed by deponent.

(8) Correct provision of law be given in CM for condonation of delay in refiling the appeal.

(9) Certified copy of death certificate be filed.

(10) Any other case Rtd. to be refiled within a week.”

The appeal was again misplaced and was only re-filed for the 6th time on 14.02.2011 after a period of one and half years, after signing the death certificate of the clerk as a true copy by the counsel which had

been issued on 29.01.2006. The same was returned on 25.02.2011 on the ground that the objections raised on 22.09.2009 at Sr. No.4, 5 and 9 have not been complied with and the counsel was also advised to visit the section. The objections read as under:-

“(1) Objections note 4, 5 and 9 dated 22/9/09 still not complied completely.

(2) RFA words should be completely corrected from the Appeal, as and where the same are mention.

(3) Addition/correction should be duly initiated by ld. Counsel.

Ld. Counsel may visit DRR Section.”

Thereafter, the appeal was again re-filed on 05.07.2011 for the 7th time. On 19.07.2011 again objections were raised by the office regarding the non-compliance of the signing of the affidavit and the non-signing of the application by the counsel and the case was returned. It was re-filed again for the 8th time on 05.10.2011 and on 31.10.2011 the following objections were raised by the office:-

“(1) Torn Pages be checked and pasted please.

(2) Objection dated 19/7/11 still not complied with.

(3) After compliance obje. Properly refiled please.

(4) CM/Apl. be sufficiently stamped Page 9 and be signed ld. Counsel please.

Return to be refiled within a week.”

Thereafter, appeal was re-filed on 09.11.2011.

Resultantly, the respondent in his reply also pointed out that the delay from 26.08.2008 to 19.11.2008 has not been explained and the above facts would go on to show that as per explanation given in the application, the case has been repeatedly misplaced by putting it in the admitted cases and a period of more than 5 years has gone by, since all the objections were finally completed. The case was filed again on

04.07.2011 and therefore, notice could only be issued on the applications for the first time on 03.08.2012.

The issue the period of limitation since has been prescribed under the High Court Rules and Orders Volume 5 Chapter-I, Part-A has been discussed in detail by three judgments of this Court in '**Darshan Singh Vs. Surjit Singh**' 2008 (2) PLR 336, '**Bhagwana Vs. Tara Chand and others**' 2008 (2) PLR 73 and '**Krishan Dev Dhiman Vs. Mahesh Bhatia and others**' 2008 (4) PLR 23.

It has been noticed that 40 days is total limit which is fixed for re-filing and it is bracketed for not exceeding 10 days at a time. Resultantly, Section 3 of the Limitation Act was also noticed to hold that valid reasons have to be given for retaining the file for a period of years and delay in re-filing has to be satisfactorily explained and where there is negligence as such the delay cannot be condoned.

Resultantly, it was held that the law of limitation is to be enforced and it is not mere a formality as such to condone the delays. Reliance was accordingly placed upon the judgment of the Apex Court to dismiss the application for re-filing on account of negligence where the delay was 688 days. The relevant portion of the judgment in **Bhagwana (supra)** reads as under:-

“13. For condonation of delay, two questions are required to be seen (i) Whether there is sufficient cause and it depends from case to case whether in given circumstances, sufficient cause has been established or not? (ii) Whether the law of limitation has to be enforced or the question of limitation should be taken only as a mere formality.

14. In Babu Singh's case (supra), the question of limitation was

raised by the Office taking into consideration the limitation from the date of the judgment and without taking notice of the return of the file. This Court made observations that if the appeal is refiled after complying with all mandatory requirements, then the limitation should be counted from the date of the original filing. In Karnail Singh's case (supra), the Court accepted the explanation of the appellant that the file was mixed with the decided case by the Clerk who left the job with the Advocate and on efforts being made, the file was traced by the Clerk later. However, in the present case, it is not the case of the applicant-appellant that after the file was misplaced any effort was made by the learned Counsel for his clerk to trace the file. Rather, the clear case is that the learned Counsel as well as his clerk forgot about the case. Even the applicant-appellant (client) did not bother to enquire about his case from his counsel. This is a case of total callousness and negligence on the part of the applicant/appellant. Even affidavit accompanying the application does not disclose the locus of deponent Ramesh Kumar, I am not inclined to accept the explanation particularly when the applicant-appellant has misrepresented in paragraph 2 of the application that file was returned to him lastly on 24.12.2007 with some objections, whereas the file was returned to him on 24.12.2005 with some objections.

15. It is settled law that rigour of limitation must apply where the statute so provides. Limitation cannot be condoned on the ground of compassion or equitable considerations or where the party seeking condonation appears to be callus or negligent. My view is fortified with the following judgments of the Hon'ble Apex Court:

*16. In the case of **PK. Ramchandran v. State of Kerala (1997)7, Supreme Court Cases 556**, wherein it has been held as under:*

“The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred

by time."

17. In the case of ***Municipal Corporation of Delhi v. International Security and Intelligency Agency Ltd. (2004) 3 Supreme of Court 250***, the Hon'ble Supreme Court has held as follows:

"21. It has to be remembered that law of limitation operates with all its rigour and equitable considerations are out of place in applying the law of limitation. The cross-objector ought to have filed appeal within the prescribed period of limitation calculated from the date of the order if he wished to do so. Having allowed that opportunity to lapse he gets another extended period of limitation commencing from the date of service of the notice of the appeal enabling him putting in issue for consideration of the appellate court the same grounds which he could have otherwise done by way of filing an appeal. This extended period of limitation commences from the date of service of the notice of appeal and such notice ought to be in a valid or competent appeal."

18. In view of the above, present application for condonation of **delay** of 688 days in re-filing the appeal is dismissed.

19. In view of the dismissal of the application for condonation of **delay** in re- filing the appeal, the application for condonation of 8 days **delay** in originally filing the appeal and the main appeal are also dismissed.

Appeal dismissed."

In the present case as noticed objections were raised repeatedly and the blanket plea which has been taken for eight times was that, the appeal was returned and the delay which has occurred in re-filing on all occasions, which varies upto 3 years. No where it has been alleged that once the papers of the appeal could not be traced, whether the appellant as such ever came and inquired about what was the pendency and status of his appeal. The affidavits which have been filed by the junior counsels as such in support of the applications, thus are not liable to be taken into consideration. Any litigant who has been agitating for his legitimate rights from 2005, would have approached the counsels as

the other side was to be put to the notice also, since 2005. No affidavit in support of the application has been filed by the appellant at any point of time, but junior counsels affidavits have been appended. As noticed the notice was issued for the first time in 2012 on account of appropriate re-filing on 09.11.2011. A period of more than 6 years has passed by that time. Resultantly, it is apparent that it is a case of negligence on the face of the record and the law laid down by this Court in the case of ***Bhagwana (supra)*** is squarely applicable that condonation of limitation cannot be a mere formality.

Keeping in view the above, this Court is of the opinion that the applications for condoning the delay and for permission to make good deficiency in Court fee at such a belated stage are not liable to be allowed.

Accordingly, the abovesaid applications are dismissed.

Main case

The appeal is also thus dismissed as being time barred.

FEBRUARY 01, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No