

CWP-COM No.56 of 2017

[1]

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

**CWP-COM No.56 of 2017
Date of decision: 21.03.2017**

Surinder Kumar Gupta

...Petitioner

Versus

Union Territory, Chandigarh Administration and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amar Vivek, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 23.02.2017 passed by the Adviser to the Administrator, Union Territory, Chandigarh, dismissing his revision petition filed against the order dated 22.09.2014 passed by the Chief Administrator, Union Territory, Chandigarh, filed against the order dated 19.10.2010 passed by the Estate Officer, Union Territory, Chandigarh, by which allotment of a house to the petitioner bearing No.1449, Sector 44B, in the Progressive Cooperative House Building Society Limited (Regd.) vide allotment letter dated 18.04.1985, was cancelled.

The revision petition was dismissed by the revisional authority on the ground of delay. The appellate order was passed by the Chief Administrator on 22.09.2014, communicated to the petitioner vide endorsement dated 20.10.2014 and the revision petition was required to be

filed within a period of 30 days from 20.10.2014 but it has been filed by the petitioner with the delay of 199 days i.e. of more than 8 months. The delay has been attributed to the counsel Ms. Gargi Kumar, who did not file the revision in time because of her sickness, whereas it has been found by the revisional authority that the complete brief of the case was handed over by the petitioner to another lawyer, who further handed over the brief to Ms. Gargi Kumar to file the same and when the eviction notice was received from the Estate Officer under the PP Act, the petitioner then came to know that the revision petition has not been filed.

Counsel for the petitioner has submitted that the revisional authority has erred in dismissing the revision petition on account of delay, taking pedantic approach that the delay of each day is to be explained. He has further submitted that while condoning the delay, the length of delay is not of much relevance but for the explanation causing the delay, as the jurisdiction is invoked by the Court only when it finds that the explanation given for condonation of delay falls within the definition of “sufficient cause”. The petitioner has made the following averments in para 2 of the application filed under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the “Act”):-

“2. That the applicant handed over the complete brief to the office of his counsel, namely, Amar Vivek, Advocate, and thereafter he remained under the impression that the revision had been filed by the Advocate. However, recently the petitioner received the eviction notice from the Court of Estate Officer under PP Act, upon which inquiries were made by the petitioner from the office of his counsel, and then it transpired that the counsel Sh. Amar Vivek, Advocate, has

assigned the task of filing the revision petition to one of his colleagues, namely, Ms. Gargi Kumar, Advocate, who had been asked to do the needful in the matter and thereafter remained hopeful that she had already filed the case. However, upon checking from her office, it transpired that Ms. Gargi Kumar, Advocate, fell seriously sick due to which she has not been in active practice since the month of November, 2014 onwards, due to which she could not file the present revision petition, due to which there has been unwarranted and unnecessary delay in the filing of the present revision petition.”

According to the above averments, the limitation to file the revision petition started from 20.10.2014. The petitioner had handed over the brief to one of his colleagues to file the same but she has not been in active practice from the month of November, 2014 onwards and the revision petition has been filed by the petitioner only after receiving the eviction notice from the Estate Office.

The question, thus, would be as to whether the reason assigned by the petitioner for not filing the revision petition in time is sufficient?

Law of limitation prescribes a period within which legal remedy can be availed for redressal of the legal injury. The Courts are bestowed with the power to condone the delay and there is no hard and fast rule laid down in dealing with the applications for condonation of delay and the Courts have advocated adoption of liberal approach in the name of interest of justice as the law of limitation is founded on public policy but at the same time, so much latitude, merely on the asking, is not permissible.

Although the petitioner had handed over the complete brief/case file to his counsel within the period of limitation and his counsel

has further delegated the duty of filing the revision petition to one of his colleagues, who did not file the revision in time and was allegedly out of practice from the month of November, 2014 onwards, then both the petitioner and the main counsel should have been vigilant to ensure filing of the revision petition because the consequences of not filing the revision petition in time were leading to the eviction of the petitioner from the premises, which ultimately led him to file the revision petition after the delay of more than 8 months when he received that notice from the Estate Office.

Counsel for the petitioner has referred to a decision of the Supreme Court rendered in the case of **N. Balakrishnan vs. M. Krishnamurthy**, 1998(7) SCC 123, in which it has been held that once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally superior court should not disturb such finding, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

There is no quarrel with the law propounded by the Hon'ble Supreme Court in that case but the reason assigned by the petitioner for condonation of delay before the revisional authority has rightly not been accepted because there is a complete neglect in following the case after it was given to Ms. Gargi Kumar, the associate lawyer, who is stated to have left the practice in the month of November, 2014. In such circumstance, it was the duty of the counsel, who was really engaged by the petitioner and to whom the brief was handed over by him, to keep a watch in respect of the

status of filing of the revision petition and in case it was not filed, he should have taken it back from the said colleague and filed it within the prescribed time without waiting for the eviction notice to awake him from his slumber so that the petitioner should not have been labelled with the allegation of adopting dilatory tactics in not filing the revision petition in time being afraid that it may not be dismissed.

Consequently, keeping in view the aforesaid facts and circumstances, I do not find any merit in the present writ petition and the same is hereby dismissed.

March 21, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No