

In the High Court of Punjab and Haryana at Chandigarh

**CM-4010-CII-2017 IN/AND
F.A.O No. 1255 of 2017
Date of Decision: 04.10.2017**

Surender Singh and another

.....Appellants

Versus

Dharambir and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. I.S.Parmar, Advocate
for the applicants-appellants.

ANITA CHAUDHRY, J

This appeal had been filed by the owner-driver against the award dated 25.3.2011.

Along with the appeal an application had been filed under Section 5 of the Limitation Act seeking condonation of delay of 1993 days. The appellants failed to disclose any sufficient reason in his application and only mentioned that their grounds of appeal may be read as part of their application. The grounds should have been specifically pleaded in the application.

I have heard the counsel for the applicants. The counsel fairly concedes that service had been effected on the owner-driver and they were contesting the petition and had also filed the written statement. The counsel submits that as the vehicle was insured and licence had been produced therefore they did not consider it necessary to appear thereafter and were

proceeded *ex parte*. Counsel further submits that when the execution was

filed and notice was received then they came to know that there was an adverse order and filing of appeal was delayed.

The plea taken by the appellants is that the delay is unintentional and their plea is that since they had filed the driving licence and the vehicle was insured therefore they did not consider it necessary to participate in the proceedings and if the delay is not condoned, irreparable loss would occur. Their prayer is that the delay be condoned.

The appeal has been filed after a delay of more than five years. The appellants had the notice of the claim petition and they had appeared and had filed their written statement. They had engaged a counsel and they had been appearing before the Court. They failed to appear on 15.1.2009. They absented from the proceedings when the case was fixed for filing the driving licence and allowed themselves to be proceeded *ex parte*. The liability of payment of compensation was placed upon the owner-driver as the driver did not have the licence to drive a heavy transport vehicle. The insurance company was exonerated. It was the duty of the appellants to contact the counsel to know the fate of the case but they chose not to contact him nor tried to find out the fate of the case. The award had been passed in 2011. It was in September 2013 when coercive process was issued that an application was filed for setting aside the *ex parte* order. The Tribunal dismissed the application on 18.10.2016.

The above would show the manner in which the appellants have conducted themselves.

The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to

adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by the Court in regard to condonation of delay. In case there are no sufficient grounds to prevent a litigant to approach the Court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

Hon'ble Apex Court refused to condone the delay of 5½ years in the case of ***Basawaraj and Ors. Vs. The Special Land Acquisition Officer AIR 2014 SC 746.***

The Supreme Court has reiterated the fact that once there is inaction and/or want of *bona fide*, and/or negligence, then, delay cannot be condoned.

The plea taken by the appellants that the delay is unintentional cannot be accepted. A right has come to be vested in the respondent which cannot be taken away. There is absolute no cogent reasons. The appellants have failed to disclose any reason much less sufficient reason. The delay is inordinate and a stricter approach has to be adopted. There is no ground to condone the delay of 1993 days in bringing this appeal.

Consequently, the application for condonation of delay is dismissed. The appeal brought up by the appellants is consequently held to

be time barred and is also dismissed.

(ANITA CHAUDHRY)
JUDGE

October 04, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes