

LPA No.1184 of 2017 (O&M) -1-

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

LPA No.1184 of 2017 (O&M)

Date of Decision : 05.09.2017

State of Haryana and others

....Appellants

Versus

Kala Singh (deceased) and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present: Mr.Gagandeep S.Wasu, Addl.AG, Haryana.

...

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned Single Judge dated 16.05.2011 and order dated 04.03.2016 passed in Review Application but filed after an inordinate delay of 2093 days. The reasons for delay have been given in paras 3 to 13 of the application under Section 5 of the Limitation Act, which we consider appropriate to extract herebelow :-

“3. That the Writ Petition bearing No.9961-A of 1990 was allowed by the Hon'ble Mr.Justice K.Kannan on 16.5.2011. Thereafter, learned Advocate General, Haryana was requested vide letter dated 26.5.2011 to arrange the certified copy of the orders of the Hon'ble High Court.

Copy of the said judgment dated 16.5.2011 was received in the office of the applicants/appellants on 20.7.2011. Thereafter, the learned Advocate General, Haryana as well as Legal Remembrancer, Haryana was requested to send expert opinion for filing further appeal etc. The Advocate General, Haryana as well as Legal Remembrancer, Haryana was again requested to send expert opinion for filing further appeal etc. on 19.8.2011. Despite not receiving the expert opinion for filing further appeal etc., the Advocate General, Haryana as well as Legal Remembrancer, Haryana were again requested to send the same vide letter dated 30.8.2011. Ultimately, opinion of the learned Advocate General, Haryana conveyed vide Memo. dated 6.9.2011 received in the office of the applicants/appellants on 16.9.2011 that it is not fit case for filing Letters Patent Appeal.

4. That despite not receiving the requisite opinion from the office of Legal Remembrancer, Haryana, office of the applicants/appellants again requested to the Legal Remembrancer, Haryana vide office letter dated 30.3.2012 to

send the opinion for filing further appeal etc.

The copy of opinion dated 10.10.2011 of Legal Remembrancer, Haryana received in the office of applicants/appellants on 20.4.2012 that it is not fit case for filing Letters Patent Appeal.

5. That thereafter case was examined and put to the higher authorities on 4.5.2012 for taking final decision for filing further appeal and the case received back with some directions. The case was again examined by the office of the applicants/appellants and put to the higher authorities for filing Letters Patent Appeal in the instant case. Therefore, the case was sent to learned Advocate General, Haryana vide letter dated 30.11.2012 for opinion in the matter by the higher authorities.
6. That the opinion of the learned Additional Advocate General, Haryana dated 11.2.2013 received in the office of the applicants/appellants for filing the review application in the Hon'ble High Court. Thereafter, on 20.2.2013, copy of the opinion of the learned Advocate General, Haryana sent to Legal Remembrancer, Haryana with the request to issue instructions to learned

Advocate General, Haryana for filing of the Review Application. The letter dated 11.3.2013 of the Legal Remembrancer, Haryana received in the office of the applicants/appellants for forwarding the sanction for filing Review Application against the order dated 16.5.2011. As per said letter dated 11.3.2013 of the Legal Remembrancer, Haryana, the case examined and submitted to the higher authorities for issuing the instructions for filing Review Application. After obtaining approval of the higher authorities, sanction for filing Review Application was sent to the Legal Remembrancer, Haryana and requested to issue instructions to the Advocate General, Haryana. The Legal Remembrancer, Haryana vide letter dated 3.4.2013 has issued instructions to the learned Advocate General, Haryana for filing Review Application in the matter. Review application No.158 of 2013 was filed in the Hon'ble High Court and notice was issued to the respondents. However, Review Application was dismissed by the Hon'ble High Court on 4.3.2016 with the observations that nothing

substantial has been brought in the review application.

7. That thereafter on 29.4.2016, the learned Advocate General, Haryana has sent the opinion to the office of appellant as well as Legal Remembrancer, Haryana. Similarly, opinion of the Legal Remembrancer, Haryana received in the office of the Applicants/Appellants on 13.5.2016 opining that it is not fit case for filing Letters Patent Appeal.
8. That after receiving the opinion from the office of Legal Remembrancer, Haryana, case was examined and put up to the higher authorities on 22.6.2016 to send the case for re-consideration of the opinion for filing the Letters Patent Appeal against the judgment dated 16.5.2011 and 4.3.2016 of Hon'ble Single Judge to the Advocate General, Haryana. After obtaining the approval of the higher authorities on 8.7.2016, the case was sent to the office of Advocate General for re-considering of the earlier opinion for filing the Letters Patent Appeal.
9. That thereafter, the opinion of the learned Advocate General, Haryana was received in the

office of applicants/appellants on 3.8.2016 opining that the order dated 16.5.2011 and 4.3.2016 of the Hon'ble Single Judge are not legally sustainable and it is a fit case for filing Letters Patent Appeal to which the Administrative Department agreed.

10. That thus keeping in view of the said opinion dated 3.8.2016 of the office of learned Advocate General, Haryana, the case was put up to the higher authorities to send the case to the Legal Remembrancer, Haryana for issuing the instructions to Advocate General, Haryana for filing Letters Patent Appeal. The Legal Remembrancer, Haryana was requested on 12.8.2016 to issue instructions for filing the Letters Patent Appeal to the learned Advocate General, Haryana. Thereafter, upon receiving the letter from the Legal Remembrancer, Haryana dated 27.9.2016, the case examined and submitted to the higher authorities to issue sanction for filing the Letters Patent Appeal in the Hon'ble High Court. The Legal Remembrancer, Haryana on 6.10.2016 requested to issue instructions to the Advocate General,

Haryana for filing the Letters Patent Appeal. The Legal Remembrancer, Haryana has issued essential instructions vide letter dated 9.11.2016 to the office of Advocate General, Haryana for filing the Letters Patent Appeal against the orders dated 16.5.2011 and 4.3.2016 of the Hon'ble High Court as well as to the office of Appellant. The said instructions received in the office of Appellant on 11.11.2016.

11. That thereafter all the required document were typed out and thereafter the case was pursued with the office of Advocate General, Haryana by the concerned dealing Assistant and as per verbal discussions in the Office of Advocate General, Haryana asked for the grounds of Letters Patent Appeal, application for condonation of delay/stay etc. and its affidavit were prepared. The same were approved by the department/competent authority.
12. That the draft Letters Patent Appeal along with the application for condonation of delay, stay etc. was sent to the office of learned Advocate General, Haryana for vetting on 20.12.2016 and the same was provisionally checked on

27.12.2016 with the observation that the draft Letters Patent Appeal along with the application of condonation of delay, stay etc. be got re-typed and again be submitted for final approval.

Thereafter, the typed draft Letters Patent Appeal along with application for condonation of delay, stay etc. was again submitted in the office of learned Advocate General, Haryana on for final approval and the same was finally vetted on.

13. That thereafter fair typed complete paper book of letters Patent Appeal along with other supporting applications was submitted in the office of Learned Advocate General, Haryana for filing in the Registry of the Hon'ble High Court and the same was filed on 9.3.2017. In this way the delay has been caused due to the above said explanation for approaching the different authorities to meet out the procedural requirements which is neither intentional nor deliberate but a bona fide delay.”

From the perusal of the above, we find that the learned Single Judge decided the lis on 16.05.2011. The review itself was preferred after two years and decided in March 2016, whereafter the appeal has again been filed after a delay of more than one

year on 14.03.2017.

We are thus not inclined to condone the delay for the reason that the review is not a right and its acceptance hinges on very slender reasons. Even if we were to stretch the principle to condone the delay upto 2016, when the review was determined by the learned Single Judge, there would still be no reason for us to condone the delay of more than one year in filing the present appeal when the appellants were alive to the consequences of law, being equipped with sufficient legal human resource which acts in the advisory capacity to all the Govt. departments including the office of the Advocate General.

The Hon'ble Supreme Court in *Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr.* **2012(2)S.C.T.269** has observed as under :

“13. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment.

Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

Keeping in view the aforesaid, we are of the view that the explanation for delay offered by the appellants is not worth acceptance.

Appeal dismissed on the ground of delay.

(MAHESH GROVER)
JUDGE

05.09.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No