

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

**C.M. No. 3656-57-C of 2015 in/and
RSA No. 1290 of 2015 (O&M)**

Date of Decision:24.10.2017

State of Haryana and others

.....Appellants

Versus

Dharampal (deceased) through LRs

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ravi Partap, AAG Haryana.

Mr. Sushil Sheoran, Advocate
for respondents.

AVNEESH JHINGAN, J.

The present regular second appeal has been filed along with an application under Section 5 of the Limitation Act for condonation of delay of 1693 days in filing the appeal.

The brief facts necessary for adjudication of the present application are that a suit for declaration was filed by the plaintiffs to the effect that they are owner in possession of the suit property and out of the said land, the defendants had constructed Bhurtana Sub Minor, without paying any compensation. The plaintiffs claimed compensation at the market rate alongwith interest at the rate of 24% per annum. The suit was decreed vide judgment and decree dated 19.1.2010.

Feeling aggrieved, the defendants filed appeal before the First Appellate Court. The said appeal was dismissed vide judgment and decree dated 7.5.2010.

In 2015, the defendants filed the present regular second appeal

alongwith application for condonation of delay of 1693 days.

The explanation given in the application for condonation of delay is that after dismissal of the first appeal on 7.5.2010, District Attorney, Bhiwani had sent his comments to Legal Remembrancer and Secretary to Government of Haryana, vide memo No. 1531 dated 17.5.2010.

Legal Remembrancer on 31.5.2010 directed that a regular second appeal should be filed upto 7.8.2010. The matter was sent to Advocate General Office. The office of Advocate General, Haryana, vide memo No. 20943 dated 18.6.2010 demanded the documents. The said documents were sent to Advocate General Office vide letter No. 2098 dated 25.7.2010 through Shri D.B. Retwal, the then SDO and Sh. Rajender Kumar, the then Zileadar. The said documents were received by Advocate General office on 26.7.2010 vide diary No. 70. The applicants state that when no intimation was received from Advocate General office, a reminder was sent to the Advocate General on 20.10.2010 and again on 13.3.2013. In the meantime, respondents filed execution petition and then Sh. Sube Singh, SDO was deputed vide letter dated 2.3.2015 to inquire into the matter. Then Advocate General, asked to depute Sh. D.B. Retwal, SDO and Sh. Rajender Kumar, Zileadar. Then the Department collected the copies of judgments and hence, the delay occurred.

In the application it has further been stated that earlier concerned SDO and Zileadar who were conducting the present case, have since retired and they have not told about the pendency of the present case and it is only now that the applicants have come to know about the proceedings because of the execution.

Learned counsel for respondents has filed reply and opposed the application for condonation of delay.

A reading of the application filed under Section 5 of the Limitation Act, shows that there is no sufficient cause given for the delay. The appeal was dismissed on 7.5.2010 and by 31.5.2010 conscious decision was taken to file the regular second appeal. It was directed by the Legal Remembrancer that the appeal should be filed upto 7.8.2010. Sending of the documents to Advocate General Office and alleged supply of documents on 26.7.2010 shows that the preparation for filing the regular second appeal had begun. Thereafter, it is only in October 2010 that a reminder was sent. After this reminder, the Department slept over the matter for almost three years. The next reminder was sent on 13.3.2013. The casual approach is self evident as firstly for almost three years no inquiry is done, no person was deputed to check from Advocate General Office as to what is the position of the case. Even no effort had been made to see that the requirements of Advocate General Office were fulfilled for filing the appeal.

The negligence of the Department does not end here. After 2013 they again went into slumber. It was only on receipt of notice of execution proceedings in 2015 that some efforts were made to file the appeal. It is well known fact that the Government Departments move at their own pace without bothering for the limitation involved.

The present case is a classical example where delay is not attributable to decision making but where after taking the decision the laxity was in executing the same.

In the application the applicants have very conveniently passed over three years from 20.10.2010 to 13.3.2013 by simply stating that one

reminder was sent in 2010 and the other in 2013. There is no explanation put-forth for the intervening period from 13.3.2013 to 3.3.2015. Nothing was done and as such no explanation is coming forth.

The application moved prima-facie lacks bonafide. One of the explanation in the application is that since the SDO and Zileadar of the Department who were handling the case retired and the appellants were not aware of the pending proceedings. When it was specifically inquired during the hearing that when these SDO and Zileadar retired, it was informed that both of them retired in the year 2010 only. If they had retired in 2010 and applicants were not aware of any proceedings, there was no question of giving a reminder in 2013. Nothing has been brought on record that if the retired SDO and Zileadar had not informed the applicants about the proceedings, was any action contemplated against them.

Be that as it may, the explanation put-forth is not sufficient to condone the delay for such a long period.

Hon'ble Apex Court has held that in ***Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459*** held as under :-

8. We have considered the respective submissions.

The law of limitation is founded on public policy.

The legislature does not prescribe limitation with

the object of destroying the rights of the parties but

to ensure that they do not resort to dilatory tactics

and seek remedy without delay. The idea is that

every legal remedy must be kept alive for a period

fixed by the legislature. To put it differently, the law

of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

Similarly, the decision of Division Bench of this Court in **Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another, 2017(3) R.C.R. (Civil) 145** (P&H) (DB) refused to condone the delay of 1760 days as the explanation was not satisfactory it was held in para 10 and 11, which are reproduced as under :-

10. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 1760 days in filing and 85 days in refiling the appeal, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question

of fact to be considered taking totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The learned Single Judge decided the matter on 11.5.2011 and the appeal was required to be filed within the stipulated period of limitation of thirty days. But the appellant has filed the appeal on 5.4.2016 and refiled on 10.8.2016, after a colossal delay of 1760 days. The explanation of the appellant praying for condonation of delay in filing and refiling the appeal, as noticed hereinabove, is bereft of sufficient cause for delay caused in filing the appeal. Moreover, even after the judgment dated 26.11.2014 was passed accepting the appeal against the judgment on the basis of which order was passed in the present case, the Letter Patent Appeal was filed on 5.4.2016, i.e., after about one year and four months. There is no satisfactory explanation for this delay as well. The Government department is supposed to pursue its litigation with due diligence. A stale matter cannot be revived by approaching the Court belatedly.

11. In view of the above, finding no merit in the applications for condonation of 1760 days' delay in filing and 85 days' in refiling the appeal, the same

are hereby dismissed and consequently, the appeal is dismissed as time barred.

In the the above decisions, it has been held that parameters for condoning the delay would be liberal in cases where there is a short period of delay and approach would be stricter where the delay is substantial.

The Hon'ble Apex Court in **Vedabai @ Vaijayanatabai Baburao Patil vs. Shantaram Baburao Patil, AIR 2001 (SC), 2582**, has held that where the delay is inordinate more than cautious approach should be adopted. It was further held that the Court has to exercise its discretion on the facts of each case.

In the above decisions, the law enunciated is that a strict approach should be adopted where the delay is inordinate. In the present case, the delay is of almost of 5 years which, by all standards, would be inordinate.

Learned counsel for the applicants tried to address his arguments on the merit of the case. The same cannot be permitted at this stage.

This Court in **Sachdeva and Sons Rice mills Pvt. Ltd. Versus State of Punjab**, 2010 (249) ELT 501, has held as under:

“4. To our mind, whether it is the State or the individual, unless explanation is offered for the delay that it is either reasonable or satisfactory to the satisfaction of the court, delay cannot be condoned. The learned counsel for the appellant has rightly submitted that no sufficient cause was shown by the State of Punjab for condoning the delay. The State, as a litigant, could not claim a special status or a right to condonation of delay without showing at least reasonable amount of care and diligence in pursuing this case. Moreover, Limitation Act still exists

in the Statute book and its provisions had to be complied with. The record clearly spells out that the State had failed to show that it had sufficient reason for not filing the appeal in time and there was no justification from the record for condoning the delay merely on the ground that huge revenue is involved and moreover, the Tribunal, while disposing of the application for condonation of delay, could not touch the merits of the case.”

As per the above decision, while dealing with the condonation of delay, the merit of the case cannot be gone into. It is further held that delay should not be condoned simply because the delay is on the part of the Department.

Keeping in view the law discussed and the reasons mentioned above, the application being without any merit, is hereby dismissed.

Consequently the appeal is also dismissed as time barred.

24.10.2017

reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No