

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.M. No.11786-C of 2016 in/and
RSA No. 4543 of 2016
Date of Decision: 31.1.2017**

Shakuntla Devi

... Appellant

Versus

Northern Railway, Health Unit, Rohtak & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Govind Chauhan, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

C.M. No.11786-C of 2016

For the reasons mentioned in the application, delay of 37 days
in re-filing the appeal is condoned.

Application stands disposed of.

RSA No. 4543 of 2016

On 10.1.2017, the following interim order was passed by this
Court:-

“On 17.12.2016, the Coordinate Bench passed the
following order:-

“Proxy counsel seeks time. The appellant has
to satisfy this Court how the suit is
maintainable before the trial Court since the
plaintiff retired as Station Master in the
Railways. The grievance relating to employees
of the Railway lies before the Central
Administrative Tribunal.

List this matter on 10.01.2017.”

Learned counsel for the appellant had prayed

for time to explain the legal position whether a widow of a Station Master in the Railways can invoke the jurisdiction of the Civil Court to claim medical reimbursement of expenses incurred in the treatment of her husband before he died. As a railway servant her claim would lie firstly to the authorities in the Railway Administration and then if the grievance remains before the Central Administrative Tribunal exercising territorial jurisdiction over the subject matter. Time is granted for further study.

List on 31.1.2017.

To be shown in the urgent list.”

The matter has been heard today. There is no doubt that service matters relating to Railway Administration lie before the Central Administrative Tribunal exercising territorial jurisdiction over the subject matter. This is plaintiff's second appeal. The plaintiff is the widow of a deceased Government employee, who passed away on 27.1.2012. She incurred medical expenses on the treatment of her husband before he died. She made a claim to the Railway Administration for reimbursement of her medical expenses, which were denied. In order to claim medical reimbursement, she filed a civil suit on 19.2.2013/26.9.2013, which was dismissed by the learned Civil Judge (Junior Division) Rohtak on 28.10.2014. The first appeal before the learned District Judge, Rohtak was dismissed on limitation and delay of 100 days in filing the appeal which was not condoned. It is against these orders that the appellant has approached this Court in regular second appeal.

The learned District Judge, Rohtak has not decided the case on

merits but has dismissed the appeal as barred by time. In any case, it is a debatable issue whether a claim for medical reimbursement against the Railway Administration can be agitated before the Civil Court. The Civil Court exercises plenary jurisdiction under Section 9 of the CPC and unless a statute takes the power away, the jurisdiction remains. Keeping this in mind and the fact that the appellant has not had a decision on merits against the judgment and decree of the trial Court then it may not serve justice if this Court refuses to intercede to avoid a miscarriage of justice. Moreover, the respondents-Northern Railways in the written statement objected to jurisdiction but they did not press the issue before the Trial Court and therefore, they are deemed to have waived right as to exclusion of jurisdiction by succumbing to the jurisdiction of the Civil Court.

The reason for dismissing the application under section 5 of the Limitation Act was that the first Appellate Court thought that if the appeal was not filed on account of negligence of the Lawyer of the plaintiff then she ought to have placed on record of the file an affidavit of the Lawyer explaining the reasons for delay in presenting the appeal. No litigant I think can compel a lawyer to file an affidavit in the circumstances nor can lawyer be compelled to file an affidavit. Even a direction from the Court in this regard may be suspect. Therefore, some allowance should have been made by the learned District Judge, Rohtak, in favour of a widow claiming medical reimbursement to have heard and decided the appeal on merits in accordance with law. The party should not be made to suffer for the fault of the lawyer.

The opinion expressed in para. 10 of the judgment of the lower

Appellate Court pretend to deal with merits as well. But there is no meaningful discussion on the merits of the appeal and the applicability of the moot medical reimbursement policies for retired employees of the railways. It is common ground that at the time of retirement in the year 1982, there was no medical reimbursement scheme prevailing in the railways for its employees. Those came later after retirement of the appellant's husband. What effect this has on the claim, would also need to be considered. There being apparent shortcomings in the work of the District Judge, Rohtak in non-suiting the appellant on limitation by refusing to condone the delay of 100 days in filing the appeal interference is warranted. This is especially when the Court below agreed that the law relating to condonation of delay is liberal then too much nitpicking is not required when dealing with grievances such as medical reimbursement of families of former low paid employees.

Issuing notice on this appeal would entail delay only to await the Railway Administration to appear in this Court. No prejudice would be caused to the Railway Administration if the impugned judgment dated 14.12.2015 passed by the learned District Judge, Rohtak is nullified for a hearing on merits of the appeal in remand proceedings.

Accordingly, this appeal is accepted to the extent that the judgment and decree dated 14.12.2015 passed by the District Judge, Rohtak is set aside. The case is remanded for a fresh decision in appeal against the judgment and decree of the learned Trial Court. The application under Section 5 of the Limitation Act, 1963 is allowed. The Judge on remand would be at liberty to examine the question of jurisdiction of the civil court

as against the Central Administrative Tribunal.

The appellant to appear personally or through her counsel in the Court of learned District Judge, Rohtak on 21.2.2017 on which date the Court will issue notice to the Railway Administration and fix the date of hearing accordingly. It is expected that the appeal, which involves a short point, will be considered and decided at the earliest and an endeavour will be made to conclude it before the end of 6 months from the date this order is placed on the file of the learned District Judge, Rohtak who may keep the file or mark it to another Judge as per his wishes.

(RAJIV NARAIN RAINA)
JUDGE

31.01.2017
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>