

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

CM No. 276-C of 2017 in/and
RSA No. 139 of 2017 (O&M)

DATE OF DECISION : 21.11.2017

Balwinder Singh and another

.... APPELLANTS

Versus

Sushil Kumar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sachin Mittal, Advocate, for the appellants.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal has been filed against the judgment and decree dated 07.03.2015 passed by learned Additional District Judge, Karnal.

The appeal is accompanied by an application under Section 5 of the Limitation Act (CM No. 276-C of 2017) for condoning the delay of 498 days in filing the appeal.

The explanation put forth in the application for condonation of delay is re-produced below for ready reference :-

“2. That infact, delay has taken place mainly on account of two reasons. One, that the talks of compromise were going on between the parties. The respondent side had lodged an FIR against the appellant w.r.t. alleged trespassing etc.

regarding the suit land. The appellant was acquitted by the learned Addl. Chief Judicial Magistrate. Thereafter, the talks of compromise was still going on when finally the respondents backed out of the same. Furthermore, secondly, the appellant had to undergo knee surgeries due to which he was physically and mentally disturbed as he was facing the physical problem for quite a long time. Owing to these reasons, the accompanying appeal could not be filed within the statutory period of limitation.”

From the perusal of the above explanation, it is evident that no explanation, much less satisfactory explanation, has been put forth for filing the appeal late. One of the reasons given is that the appeal was not filed because talks of compromise were going on between the parties. Further, it has been stated that the respondent side had lodged FIR against the appellant regarding trespass on the suit land. The appellant was acquitted and the compromise talks were still going on and now, the respondents have backed out. Another reason given is that the appellant had undergone knee surgery, because of which he was facing physical problem and could not file the appeal.

A mere glance on the reasons given would show that these are bald statements, not supported by any evidence. Even no details have been mentioned. The talks of compromise cannot be a ground for not filing the appeal within time. The appeal could have been filed and talks of compromise could have continued on the other hand. If the parties would

have arrived at a compromise, appeal could have been withdrawn or not pursued.

Similarly, the explanation that an FIR was lodged, in which the appellant was acquitted, is also not a satisfactory explanation. The lodging of an FIR cannot be an excuse for not filing the appeal within limitation. It has not been averred that as a result of the FIR, the appellant was behind the bars and hence was not in a position to pursue his remedies.

The third explanation given is that the appellant had undergone knee surgery, because of which the appeal could not be filed. No evidence has been placed on record regarding the surgery. No date of surgery has been mentioned. The delay is of more than 16 months and it has not been stated that the appellant was hospitalised or was not able to move for almost 16 months. There is another aspect of the matter that in the appeal, there are two appellants, i.e. Balwinder Singh and his wife Saravjit Kaur. Even assuming there is an iota of truth in the above said explanation, his wife could have always pursued the appeal.

In **Amalendu Kumar Bera and others Vs. The State of West Bengal**, 2013 (2) RCR (Civil) 534, the Hon'ble Apex Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of 'sufficient cause' delay shall not be condoned.

In the present case, the appellants have failed to show sufficient cause. Rather they are found to be negligent in pursuing their remedy of

appeal.

The Hon'ble Apex Court 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.”

In the above decision, it has been held that a liberal approach should be adopted, where the delay is of short period and a conscious decision is to be taken, where the delay is inordinate.

In the present case, delay is of 498 days, which by no stretch of imagination can be said to be of a short period. So far as the liberal approach in condonation of delay is concerned, it cannot be taken to the extent that where sufficient explanation is not coming forth, delay should be condoned.

A Division Bench of this Court in case of **Municipal Committee (now Municipal Corporation), Bathinda vs. Bachan Singh through his LRs and another**, 2017 (3) R.C.R. (Civil) 145 (P&H) (DB), finding the explanation to be not satisfactory refused to condone the delay of 1760 days, and held 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 above decision, it has been held that the question as to 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.

The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by LRs Vs. Executive Engineer Jalgaon Medium Project and another**, 2008 (17)

SCC 448, held as under :-

“It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'”

In the above decision, it has been held that it is the duty of the appellant to prefer appeal within time. The court cannot enquire into belated and stale claims on the ground of equity.

In the present case, the delay of more than 16 months cannot be considered as a short delay, a conscious approach has to be adopted. As discussed above, the explanations put forth are not satisfactory and it appears that the appellants were negligent in pursuing their remedy. In the absence of a sufficient cause, delay cannot be mechanically condoned. The reasons given appear to be an effort to revive a time barred claim.

For the reasons recorded above, no sufficient cause has been shown for condoning delay in filing the appeal. The application for condonation of delay is without any merit, and is, therefore, dismissed. As a result, the appeal is dismissed being time barred.

November 21, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes