

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

CM No. 5401-C of 2017 in/and
RSA No. 2218 of 2017 (O&M)

DATE OF DECISION : 21.11.2017

Mahesh Chand

.... APPELLANT

Versus

Smt. Dropti and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. S.K. Tripathi, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal has been filed against the judgment and decree dated 04.03.2014 passed by learned Additional District Judge, Faridabad.

The appeal is accompanied by an application under Section 5 of the Limitation Act (CM No. 5401-C of 2017) for condoning the delay of 1048 days in filing the appeal.

In the application, the explanation put forth for condonation of delay is that the appellant is 65 years old unemployed person and he had no source of income to arrange the counsel fee. The trial court counsel refused to file appeal before the High Court without fee. It has further been stated that on receipt of notice in the execution petition, a lawyer was engaged by

him and when his objections were dismissed, he was advised to approach the High Court for filing the appeal in order to save his house.

The explanation put forth by the appellant is not acceptable. On the one hand, it has been mentioned that he was an unemployed person having no source of income and was unable to engage a lawyer for filing appeal. In the same breath, it has been mentioned that he engaged a counsel for contesting the execution proceedings. It is only after dismissal of his objections in the execution proceedings that he filed the appeal before the High Court. Nothing has been brought on record that after engaging a counsel for defending the execution proceedings, from where the money was arranged for filing the present appeal. Moreover, if counsel could have been engaged for contesting execution proceedings, then he could have filed the appeal within limitation.

The explanation put forth is not bonafide. It appears that the entire endeavour of the appellant was to delay the matter. No appeal was filed within the limitation and the execution proceedings were contested. Having failed to stall the execution proceedings any further, the present appeal has been filed.

It is settled principle of law that a liberal approach should be adopted for condoning the delay only in cases where there is an explanation coming forth. The delay is not to be condoned mechanically.

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 1048 days, which by no stretch of imagination can be said to be of a short period. So far as the liberal approach in condoning the 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), while refusing to condone the delay of 1760 days as the explanation was not satisfactory, 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, the court refused to condone the delay as no satisfactory explanation was given for condoning the delay.

In **Pundlik Jalam Patil (D) by LRs Vs. Exe. Eng. Jalgaon Medium Project and another**, 2008 (17) SCC 448, the Hon'ble Apex Court has 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 was held that if there was negligence in filing the appeal, the stale claim cannot be re-opened.

In **Basawaraj and another Vs. Special Land Acquisition Officer**, 2014(1) R.C.R (Civil) 603 (S.C), it was held that the Court has to decide if delay was bonafide or a device.

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. In the present case, the appellant has failed to show sufficient cause for condonation of delay in filing the appeal.

The negligence in not pursuing the remedy cannot be a ground for condonation of delay. In the present case, delay is of more than two years and ten months, i.e. 1048 days.

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

Yes

Whether Reportable

Yes