

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.4073 of 2017 (O&M)
Date of Decision: 28.08.2017**

Dakshin Haryana Bijli Vitaran Nigam
Limited

... Appellant

Versus

Sudesh Kumar

... Respondent

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

Present: Mr. R.S. Longia, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

1. There is a delay of 26 days in filing this appeal by the Dakshin Haryana Bijli Vitaran Nigam Limited with an application under Section 5 of the Limitation Act seeking condoning of delay. The following reasons have been assigned which have caused the delay in presenting the appeal within the prescribed period of limitation. It is stated in para.3 that the delay is neither intentional nor mala fide but only for bona fide reasons stated in para.2. In para.2 the story set up is as follows:-

“2. That the appeal filed by the Appellant before the lower appellate court was decided on 01.04.2017. When the appellant came to know of the same, he approached the counsel and found that the certified copy of the order was not applied for. Therefore the certified copy of the same was got applied for on 05.04.2017 and stood prepared on 10.04.2017 and the delivery of the same was made on 12.04.2017. The approval for filing the appeal was immediately sought but could be granted only on 25.07.2017 by the competent authority because matter was

discussed at different levels. After collecting papers from the advocates of both the courts below and getting approval from the competent authority for filing this appeal, the same were handed over to the counsel for the appellants on 31.07.2017. The appeal is being filed on 01.08.2017 without any further delay. In this process, filing of the appeal has been delayed by 26 days”

2. I find that there is no sufficient explanation other than the matter being discussed at different levels, collecting papers etc. which are stock defences in such applications. The only criteria under Section 5 of the Limitation Act is for parties to show sufficient cause and a plausible and satisfactory explanation of reasons which led to the delay as one beyond the control of a reasonable litigant. The type of defence taken in the application is the one which have been severely criticized by the Supreme Court in Office of the Chief Post Master General & ors. v. Living Media (India) Ltd. & Anr., 2012(2) S.C.T. 269. Hence, even 26 days delay in filing the appeal, which may appear marginal, can lead to the dismissal of an appeal at the threshold without calling upon the Court to examine the merits of the case.

3. State agencies have no immunity for approaching late and expecting their application to be allowed mechanically by the Court expecting indulgence as a matter of right. The Nigam is an agency of the State and unlike private parties it possesses the wherewithal with a battery of lawyers at its command and decisions taken as top priority in litigation. Decisions for filing appeals can be taken in a few hours by the top man in consultation with counsel. It was the Nigam's duty to place the papers in the hands of its counsel in time for the presentation of the appeal. No agency of State can hide behind a counsel's shoulder when it is at fault and expect delay will be condoned. However, the Court remains alive to the labour of

learned counsel appearing for these agencies that need time and thought to prepare an appeal for presentation complete in all respects. And if some additional time is taken, then so long as it is within reasonable limits of bonafide effort or legal complexity Courts do make an exception and condone delay whenever properly explained. However, when the date of expiry of prescribed limitation is over in the hands of the agency presenting the appeal then the vigours of Section 5 will come into play. Decree-holders earn valuable rights when limitation expires. This is what has happened in this case.

4. Mr. Longia informs me, and I have no reason to disbelieve him as an officer of the Court that he filed the appeal swiftly on the next day after the case papers were placed in his hands. He was expeditious but his clients failed to deliver the papers to him in time. In the future, the Nigam would realise its duty in litigation to act promptly by putting its house in order otherwise it will keep ending up losing litigation at a considerable expense which it might have to bear, even in case such an order is further challenged which would only add extra burden to the resources of the Nigam which deals with tax payers money and supplies electricity.

5. Thus, the application under Section 5 of the Limitation Act, 1963 is dismissed. As a consequence, the appeal also stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

28.08.2017
manju

Whether speaking/reasoned
Whether reportable

Yes
No