

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

CM No. 12689-C of 2017 in/and
RSA No. 4765 of 2017 (O&M)

DATE OF DECISION : 21.11.2017

Amrik Singh

.... APPLICANT-APPELLANT

Versus

M/s Sekhon Trading Company and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashok Goel, Advocate,
for the applicant-appellant.

* * *

AVNEESH JHINGAN, J.

This regular second appeal has been filed by the plaintiff being aggrieved of dismissal of his recovery suit and decreeing of counter-claim filed by the respondents-defendants.

The appeal is accompanied by an application under Section 5 of the Limitation Act (CM No. 12689-C of 2017) for condoning the delay of 1750 days in filing the appeal.

The explanation put forth for condonation of delay is that after passing of the judgment and decree by the learned first appellate court, the matter was compromised between the parties but the same was not reduced into writing. It is averred that it is only when the respondents-defendants filed the execution application, the appeal has been filed. It appears that the

applicant-plaintiff was negligent in pursuing his case. It is only when the execution application was filed and he had to pay the amount, that an explanation has been put forth, which has no legs of its own to stand.

It is settled proposition of law that while dealing with condonation of delay, merits of the case are not to be seen. In the present case, in order to appreciate the explanation, it is necessary just to have a courtesy look in the background of the litigation.

The applicant-appellant had filed a suit for recovery of ₹ 1,46,093/- stating that he had sold his agricultural produce through the respondents-defendants and his amount was not paid.

On notice, along with the written statement, a counter-claim was filed by the respondents-defendants stating that actually they had to recover ₹ 1,70,679/-.

Learned courts below dismissed the recovery suit of the applicant-plaintiff and decreed the counter-claim of the respondents-defendants.

In the application for condonation of delay, it has been submitted that after dismissal of the first appeal, an oral compromise was entered into between the parties, therefore, the appeal was not filed. The said explanation is not worth acceptance. Firstly, there are no details given that what were the terms of the compromise and in whose presence, the compromise was entered. Secondly, since the money was involved and there were already claim and counter-claim, there must have been some give and take of money. In such a contested case, it is not expected that money would

have been transacted without receipt. No such receipt has been referred to.

There is another aspect of the matter that if a compromise is entered into between the parties after litigating in two courts and money is involved, it is not expected that the parties would wait for almost more than four and half years to settle the accounts in terms of the compromise. The only endeavour of the applicant-plaintiff is to revive a stale and dead claim.

The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by LRs Vs. Executive Engineer Jalgaon Medium Project and another**, 2008 (17) SCC 448, where there was 1724 days' delay in filing the appeal, 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.'”

The Hon'ble Apex Court in **Vedabai @ Vijayanatabai 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 present case, the applicant-plaintiff was not vigilant to

pursue his remedy for more than four and half years.

Learned counsel for the applicant-appellant has relied upon a decision of the Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others**, AIR 1987 (SC) 1353, to submit that a liberal approach should be adopted while condoning the delay.

There is no quarrel with the proposition that a liberal approach should be adopted for condoning the delay. The liberal approach cannot be stretched to the extent that the statutory limitation has to be given a go-bye and this jurisdiction is to be exercised by the court in a mechanical manner. Reliance can be placed on a decision of the Hon'ble Apex Court in **Amalendu Kumar Bera and others Vs. The State of West Bengal**, 2013 (2) RCR (Civil) 534, wherein it was 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.

Learned counsel for the applicant-plaintiff further relied upon a Division Bench decision of this Court in **Dilbagh Singh Vs. Collector Land Acquisition, Industries Department Punjab**, 2002 (2) Vol. CXXXI Page 775, wherein it has been held that majority of people living in the rural areas of the country are illiterate and ignorant of their rights. They are also not aware of the intricacies of law and proceedings in the Courts and Tribunals. The Court has to adopt an extremely liberal approach.

The said judgment is of no help in the facts of the present case, as the applicant-plaintiff had already exercised his rights in two courts. He

was well conversant with the facts of the case and had a counsel engaged in the courts below, yet no plausible explanation has been given for not filing the appeal for more than four and half years.

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