

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

CR No.138 of 2018

Date of Decision:18.05.2018

IG Officer BSF, Fitter HQ shillong and othersPetitioners

Vs.

Mukesh Devi and anotherRespondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.S.K.Sharma, Advocate for the
petitioners.

Mr.Manoj K. Tanwar, Advocate for respondent No.1.

Mr. Ankur Sidhar, Advocate for
Mr.Balraj Gujjar, Advocate for respondent No.2.

AMIT RAWAL J.(Oral)

The present revision petition is directed against the impugned order dated 25.09.2017, whereby the appeal filed by the petitioners-defendant against the judgment and decree dated 03.01.2015 rendered in Civil Suit No.885 of 2009, has been dismissed being barred by law of limitation.

Learned counsel appearing on behalf of the petitioner submitted that the aforementioned judgment and decree was passed on 03.01.2015. Since the petitioner was to avail the remedy of the appeal, could not file the appeal within 30 days. When the remedy was chosen, it was accompanied by an application seeking condonation of delay for 08 months. It was alleged that the certified copy of the order was obtained on 08.06.2016. It was received by the 40th Battalion BSF at Kalyani, Nadia (West Bengal) and was forwarded to the higher headquarters for consideration. In this process, the delay had occurred.

The judgment and decree was not sustainable, for the suit was filed for claiming the retiral benefits of deceased Ajit Singh by the mother who was not dependent upon her husband, for, her husband was already posted as inspector in BSF. There is violation of the CCS Pension Rules, 1972. Learned counsel for the petitioner relied upon the judgment rendered in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others 2013(4) R.C.R. (Civi) 785.**

Per contra, learned counsel appearing on behalf of the decree holder respondent-plaintiff submitted that no reasonable explanation of each and every date has come forthwith in the application which is the requirement of law and, therefore, application was not only vague, but devoid of the merit and had rightly been dismissed. The parameters for condonation of delay vis-a-vis the private party or Central Government or the instrumentality of the State cannot be different and bend in favour of the Union of India. The explanation given in the application after receipt of the file by the concerned department is conspicuously wanting and urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and is of the view that there is a force and merit in the submission of learned counsel for the petitioners, for, I would refrain to comment upon as to whether Rule 54 of CCS Pension Rule, 1972 applicable or not for it would be the domain of the Lower Appellate Court. In such circumstances, the focus of the Lower Appellate Court should have been on the main appeal instead of having pondered upon condonation of delay.

In the judgment cited above, the Hon'ble Supreme Court laid down the following principles:-

“15. From the aforesaid authority the principles that can broadly be culled out are:

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are supposed to legalize injustice but are obliged to remove injustice.*
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is*

that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

Therefore, I am of the view that the impugned order is not sustainable, the court ought to have condoned the delay and subject to terms and conditions which deem appropriate.

In view of the above, impugned order is set aside the delay of 08 (eight) months is condoned in filing the appeal, the appeal is ordered to be restored. Parties through their counsel are directed to appear before the Lower Appellate Court on 05.07.2018, subject to the cost of Rs.10,000/- to be paid to the respondent-plaintiff.

(AMIT RAWAL)
JUDGE

18.05.2018
Anjal/manpreet

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No