

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1927 of 2018
Date of Decision: December 17, 2018

Suresh Kumar Jain

...Petitioner

Versus

Kamal Bhatia & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Dinesh Nagar, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order dated 06.11.2017 (Annexure P-4), whereby the appeal preferred by the petitioner-plaintiff against the judgment and decree dated 06.08.2014, whereby his suit for specific performance of the agreement to sell was dismissed, has been dismissed being barred by delay of 468 days.

Mr. Dinesh Nagar, learned counsel for the petitioner- plaintiff submitted that against the judgment and decree aforementioned, an application for review was filed on 20.09.2014, but the same was dismissed on 07.09.2015. Certified copy was applied on 28.09.2015 and the same was made available on 16.10.2015. Accordingly, the appeal was filed on 01.12.2015. In such circumstances, delay occurred. He has further brought to the notice of this court that the service of the respondents was dispensed with by the Lower Appellate Court vide order dated 11.09.2016. The petitioner was diligently availing the remedy available under law and was not properly advised whether the appeal was to be filed within 30 days or 90 days and in such circumstances, delay of 468 days occurred. The Court

should have adopted a pragmatic approach while considering the application for condonation of delay as per the following principles culled out by the Hon'ble Supreme Court in **Esha Bhattacharjee Versus FAO No.2704 of 2011** Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 Supreme Court Cases 649:-

“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 not supposed to legalise 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.”

The dates explained above are not in dispute. In such circumstances, the application ought to have been allowed subject to any terms and conditions. Accordingly, the impugned order is set-aside. Delay of 468 days in filing the appeal is condoned. Appeal is restored to its original number, subject to payment of ₹ 10,000/- as costs, to be deposited in the accounts of Bar Association of the Punjab and Haryana High Court, Chandigarh.

Revision petition stands allowed.

December 17, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No