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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2002-2017 (O&M)

Date of decision : 22.03.2018

Amrit Pal

... Petitioner(s)

Versus

Kuldeep Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kewal Singh, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 09.12.2016, whereby the appeal preferred by the respondents-plaintiffs accompanied by an application seeking condonation of delay against the order dated 20.04.2013 passed by the trial Court, vide which, the counter-claim of the petitioner had been allowed, subject to the cost of ₹5,000/-, has been allowed.

Learned counsel for the petitioner-defendant submitted that in the aforementioned suit filed by the respondents-plaintiffs for declaration, the petitioner-defendant had set up a counter-claim. The suit, aforementioned, was rejected, whereas the counter-claim by way of specific performance of the agreement to sell dated 10.04.2016 was allowed by the trial Court vide judgment and decree dated 20.04.2013. There was gross

delay in filing the appeal as the appeal was filed on 10.09.2013 and therefore, the Court below ought not to have condoned the delay, thus, urges this Court for setting aside the impugned order.

Learned counsel for the respondents-plaintiffs-appellant/applicant before the lower Appellate Court, submitted that the suit was dismissed on 20.04.2013 and certified copy of the same was applied on 23.04.2013. The same was prepared on 17.05.2013. The appeal was filed on 10.09.2013, thus, there was a delay of 70 days, which was explained as counsel representing the plaintiffs had met with an accident, therefore, the appeal could not be filed within the period of limitation, thus, urges this Court for dismissal of the revision petition as the other party had been compensated in terms of costs.

I have heard the learned counsel for the parties and appraised the paper book.

The facts as indicated above are not in dispute. The only point is whether in such circumstances, the lower Appellate Court could have condoned the delay of 70 days in respect of appeal, filed against the judgment and decree dated 20.04.2013, whereby the counter-claim of the petitioner/counter-claimant granting specific performance of the agreement to sell had been allowed. The answer would be in 'affirmative' as the Hon'ble Supreme Court in **“Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others” (2013) 12 Supreme Court Cases 649**, has laid down the principles for condoning the delay, which are extracted hereinbelow:-

“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 encapsulate 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.*
- xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

The case of the respondents/plaintiffs-appellant/applicant before the lower Appellate Court, falls within the aforementioned

parameters, therefore, I do not find any illegality and perversity in the impugned order, under challenge, much less, no ground is made out for interference, accordingly, the present revision petition is dismissed.

22.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No