

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

Sr. No.293-d

Civil Revision No.232 of 2018 (O&M)
DECIDED ON: September 04, 2018

AMARJIT SINGH (DECEASED) THROUGH LRS.

..PETITIONERS

VERSUS

DIN DAYAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Balbir Singh Sewak, Advocate,
for the petitioners.

Mr. Gaurav Singla, Advocate,
for the respondent.

JASPAL SINGH, J.

By virtue of the instant civil revision preferred under Article 227 of the Constitution of India, petitioners have sought for setting aside the order dated 01.08.2017 (P-4) passed by learned Additional District Judge, SAS Nagar (Mohali), whereby an application filed under Section 5 of the Limitation Act for condonation of delay in filing the appeal has been dismissed and consequent to dismissal of an application, appeal has also been dismissed and further seeking direction to the Lower Appellate Court to decide the appeal on merits.

Civil Revision No.232 of 2018 (O&M)

121

2. The brief facts giving rise to the instant revision petition are that husband of petitioner No.1 preferred Civil Suit No.58 of 2010 captioned as ***Amarjit Singh vs. Din Dayal*** for possession by way of specific performance on the basis of an agreement to sell dated 04.12.2004 executed by the respondent. But that suit was dismissed vide judgment and decree dated 03.09.2013 passed by Additional Civil Judge (Senior Division), Dera Bassi. Aggrieved against the said judgment and decree dated 03.09.2013, husband of petitioner No.1 preferred civil appeal, since there was a delay in filing the appeal before the Lower Appellate Court, an application under Section 5 of Limitation Act, 1963 (for short 'Act') for condonation of delay was preferred. The aforesaid application moved under Section 5 of the Act was dismissed vide order dated 01.08.2017 passed by Additional District Judge, SAS Nagar, Mohali and thereafter husband of petitioner No.1 namely Amarjit Singh was taken away by the nature on 20.10.2017 and being dissatisfied, petitioners have preferred the instant petition.

3. In response to notice of Civil Revision, Mr. Gaurav Singla, Advocate appeared and represented the respondent.

4. While assailing the impugned judgment dated 01.08.2017 passed by the lower appellate court while dismissing the appeal as well as an application under Section 5 of the Act, it has been contended by learned counsel for the petitioners that the same are absolutely against the evidence available on file and settled canons of law and misappreciation of the facts as well as the law on the point of limitation has resulted into miscarriage of justice. He further contends that there is no fault on the part of the husband of petitioner No.1 on account of which delay in presentation of the appeal occurred. Rather, it was only on account of the reason that the husband of

petitioner No.1 had engaged Sh. Gur Rattan Pal Singh, Advocate to prosecute his case and subsequently he visited the resident of his counsel in the first week of October, 2015 and came to know that his counsel has already been taken away by the nature in the first week of April, 2014. It was only thereafter, husband of petitioner No.1 enquired about the fate of his case and after checking a number of files lying in his office, some papers were found and there was only thereafter, an appeal before the lower appellate court was preferred along with an application for condonation of delay. The said application and consequent accompanying appeal have been dismissed by the lower appellate court mainly for the reason that applicant-appellant did not appear personally in the witness box rather examined his attorney holder Jaspreet Singh and further that attorney holder is though competent to depose about the facts which are in his personal knowledge but is not competent to appear in the witness box as the capacity of a party.

5. Learned counsel for the petitioners further urged that in the similar matter, SLP was filed after the revision petition was dismissed by this Court and same was disposed of vide order dated 03.11.2017, whereby in those Special Leave to Appeals the petitioners were granted liberty to file the review petitions which are also listed today. In fact, even Jaspreet Singh was also not cross-examined as a result of which, the matter was disposed of.

6. On the other hand, learned counsel for the respondent has submitted that there is no illegality or infirmity in the impugned order dated 01.08.2017 (P-4) passed by the lower appellate court. In fact, husband of petitioner No.1 was very much aware of the dismissal of the suit vide

judgment and decree dated 03.09.2013 and he did not intentionally opt to prefer an appeal which was subsequently filed after an inordinate delay. He was granted due opportunity to explain the delay. Since he fails to bring any cogent or convincing evidence on record, an application moved by him under Section 5 of the Act was dismissed and consequent upon the dismissal of the application for condonation of delay, appeal also stood dismissed.

7. Learned counsel for the respondent further contends that husband of petitioner No.1 has concocted a false story with regard to the fact that some papers were handed over to Mr. Gur Rattan Pal Singh, Advocate for filing an appeal, but he did not prefer an appeal and ultimately breathed his last in the month of April, 2014. It cannot be expected that after the dismissal of the suit vide judgment and decree dated 03.09.2013, petitioner would not visit or contact his counsel continuously approximately for two years. Since, the impugned order is absolutely in consonance with the evidence and there is no explanation for the condonation of delay as well as legal proposition, no interference by this Court would be justified and instant revision petition deserves to be dismissed.

8. After having weighed the rival contentions of the learned counsel for the parties and bestowing due consideration to the documents as well as legal proposition applicable to the facts and circumstances of the case in hand, this Court is of the considered view that the impugned order dated 01.08.2017 passed by the lower appellate court is not legally and factually justified and is liable to be set aside.

9. From the records available one thing is evident that Sh. Gur Rattan Pal Singh, Advocate is no more in this world and was taken away by

Civil Revision No.232 of 2018 (O&M)

the nature in the month of April, 2014 and subsequently husband of petitioner No.1 preferred an appeal after a delay in the month of October, 2015.

10. The law of limitation is enshrined in the legal maxim “Interest Reipublicae Ut Sit Finis Litium” i.e. (i) it is for the general welfare that a period be put to litigation. The Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for some reasonable period.

11. It is also equally settled that by catena of judgments that the Court should adopt a liberal approach in considering application for condonation of delay on ground of sufficient cause under Section 5 of the Act. Such an observation was also made by the Hon'ble Apex Court in case ***Lanka Venkateswarlu vs. State of Andhra Pradesh, AIR 2011 CS 1199; (2011) 4 SCC 363.***

12. Similarly in case ***G. Ramagowda vs. Special Land Acquisition Officer, AIR 1988 SC 897***, the Hon'ble Apex Court observed that the expression 'sufficient cause' appearing Section 5 of the Act must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay.

13. In another case ***State (NCT of Delhi) vs. Ahmed Jaan, 2008 (10) JT 179; 2008 (11) SCALE 455*** while interpreting the expression 'sufficient cause', the Hon'ble Apex Court has observed that the terms sufficient cause should be considered with pragmatism in justice oriented approach rather than the technical detection of sufficient cause for

explaining every day's delay. Moreover, a party causing delay is not going to be benefited and by taking assistance from the observation made in the aforesaid judgments, this Court arrives at a conclusion that an appeal should have been decided on merits instead of dismissing the same on technical ground of delay in preferring the same.

14. As an up shot of the aforesaid discussion, instant revision petition is allowed whereby the order dated 01.08.2017 (P-4) passed by the Lower Appellate Court is set aside and consequently, an application for condonation of delay preferred before the lower appellate court stands allowed. The file be returned to the concerned court for deciding the appeal on merits.

15. Parties through their counsel are directed to appear before the lower appellate court on 25.09.2018.

September 04, 2018
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No