

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

Civil Revision No.2751 of 2018.

Decided on:-April 27, 2018.

Gurdeep Singh and others

.....Petitioners.

Versus

Joginder Pal Jhanjhi and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Piyush Kant Jain, Advocate
for the petitioners.

HARI PAL VERMA, J.

The petitioners have filed the present civil revision under Article 227 of the Constitution of India impugning the order dated 07.04.2018 (Annexure P-4) passed by learned Additional District Judge, Moga, whereby the application filed by the respondents No.1 and 2 under Section 5 of the Limitation Act, 1963 (for short, the Limitation Act) for condonation of delay of 624 days in filing the appeal against the order dated 10.02.2016 for rejection of plaint passed by learned Civil Judge (Junior Division), Moga, was allowed. Consequently, the delay of 624 days in filing the civil appeal against the aforesaid order dated 10.02.2016 was condoned.

Briefly stated, the respondents No.1 and 2-plaintiffs had filed a suit for declaration to the effect that the company i.e. Sewak Bus and Transport Company Private Limited was owner of the suit land and six sale deeds were executed and registered in respect of part of the suit land in the

years between 1997 to 1999 in favour of the petitioners. The mutations were also entered and sanctioned in respect thereof. Prayer for permanent injunction restraining the defendants from alienating or changing the nature of the suit land and making any construction was also made.

In the said suit, the petitioners had moved an application under Order VII Rule 11 CPC for rejection of the plaint on the ground that the respondent-plaintiffs have no cause of action or legal right in respect of the suit property. Vide order dated 10.02.2016, learned civil Court had allowed the said application and rejected the plaint.

The aforesaid order dated 10.02.2016 passed by the civil Court was challenged by the respondents No.1 and 2-plaintiffs by way of a revision petition before this Court vide **CR No.7897 of 2016**. Since the order dated 10.02.2016 passed by the civil Court was required to be challenged by way of an appeal under Section 96 CPC, the aforesaid revision petition was dismissed as withdrawn vide order dated 28.09.2017 passed by this Court, however, with liberty to the plaintiffs to file an appeal before the lower appellate Court as provided under Section 96 CPC. Accordingly, the respondents No.1 and 2-plaintiffs filed an appeal against the order dated 10.02.2016 before the lower appellate Court along with an application seeking condonation of delay of 624 days in filing the appeal.

Vide order dated 07.04.2018, learned lower appellate Court allowed the application for condonation of delay of 624 days in filing the appeal, however, subject to payment of costs of Rs.5,000/-.

Learned counsel for the petitioners has argued that the suit was filed in the year 2013 and the plaint was rejected under Order VII Rule 11 CPC by learned civil Court vide order dated 10.02.2016. Therefore, limitation for filing the appeal against the order dated 10.02.2016 expired on 12.03.2016, but the appeal was filed by respondents No.1 and 2-plaintiffs on 27.10.2017 without giving any plausible reason. Therefore, the appeal was hopelessly barred by limitation. Even otherwise, the respondents No.1 and 2-plaintiffs had filed revision petition against the order dated 10.02.2016 before this Court on 25.04.2016 and the said revision petition was dismissed as withdrawn on 28.09.2017, though with liberty to file appeal, but without condoning the delay.

He has further argued that a plain reading of Section 2 CPC provides that an order of rejection of plaint constitutes a decree within the definition provided therein. Therefore, against the order whereby the plaint was rejected, the only remedy available to the respondents No.1 and 2-plaintiffs was to file an appeal. But instead of filing the appeal as provided under Section 96 CPC, the respondent-plaintiffs had filed a revision petition before this Court under Article 227 of the Constitution of India. Even the Registry had taken objection regarding maintainability of the revision petition, but still the revision petition was pursued. At the time of withdrawal of the revision petition, this Court had not condoned the delay. The respondents were required to explain each day's delay, but interestingly, they did not file any affidavit that they had been pursuing their remedy under good faith and due diligence. So when such plea has never been pleaded, the delay

cannot be condoned. Even otherwise, the respondent-plaintiffs have failed to mention the number of days by which the appeal is delayed. So, once there was no material before the lower appellate Court to condone the delay, the appeal was liable to be rejected on the ground of limitation alone. Limitation gives a valuable right and, therefore, delay should not be condoned casually. He has placed reliance on **(2016) 16 Supreme Court Cases 152** titled as ***Suryachakra Power Corporation Limited Versus Electricity Department Represented by its Superintending Engineer, Port Blair and others*** to contend that the respondent-plaintiffs cannot be extended the benefit of Section 14 of the Limitation Act and the time spent in the proceedings before a Court without jurisdiction/wrong forum cannot be excluded for the purposes of computation of limitation. In order to claim benefit of Section 14 of the Limitation Act, the applicant is required to plead good faith, due diligence and is also required to establish these ingredients. To invoke the benefit of Section 14 of the Limitation Act, the applicant is required to prove two main ingredients (i) the party should be prosecuting another civil proceedings with due diligence and (ii) the prosecution should be in good faith, but still in order to claim the benefit under Section 14 of the Limitation Act, both ingredients i.e. due diligence and good faith must be established.

He has also referred to **2016 SCC Online P&H 15724** passed in **LPA No.717 of 2016 (O&M)** titled as ***Iqbal Singh and another Versus State of Punjab and others*** to contend that though the Court should adopt a liberal approach where delay is of a short period, but at the same time, when the delay is inordinate, strict proof is required so as to condone the delay. The

respondent-plaintiffs, therefore, were required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond their control and was inevitable, but the respondent-plaintiffs have miserably failed to establish this fact. The impugned order dated 07.04.2018, whereby delay of 624 days has been condoned is liable to be set aside.

I have heard learned counsel for the petitioners.

There is no dispute that the plaint filed by respondents No.1 and 2-plaintiffs was rejected vide order dated 10.02.2016 passed by the civil Court on the basis of an application under Order VII Rule 11 CPC filed by the petitioner-defendants. As provided under Section 2 CPC, rejection of plaint constitutes a decree in the strict sense. Thus, when a plaint is rejected, the remedy is to file an appeal. However, instead of filing an appeal, the respondent-plaintiffs had preferred a revision petition before this Court. However, vide order dated 28.09.2017 passed by this Court, the revision petition was dismissed as withdrawn, but with liberty to the respondent-plaintiffs to challenge the order dated 10.02.2016 passed by the civil Court by way of an appeal under Section 96 CPC.

The plea that this Court had not condoned the delay or had not directed the lower appellate Court to condone the delay, is of no consequence particularly when the respondent-plaintiffs had been pursuing the remedy under the bonafide belief and revision petition remained pending before this Court for a considerable period. Moreover, initially this Court had entertained the revision petition, though at a later stage, the said petition was dismissed as withdrawn. The revision petition was dismissed as withdrawn on 28.09.2017

and after arranging certified copies of various orders, the appeal was finally filed by the respondent-plaintiffs on 27.10.2017. Therefore, the argument of learned counsel for the petitioners that even after withdrawal of the revision petition, the appeal was filed after an inordinate delay, cannot be accepted.

It has been held in *(2010) 5 Supreme Court Cases 459* titled as *Oriental Aroma Chemical Industries Limited Versus Gujarat Industrial Development Corporation and another* that the Court should adopt a liberal approach to condone the delay when the delay is of a short period. In the case in hand, no doubt, the delay is of 624 days in filing the appeal, but this Court finds that the ground pleaded by the respondent-plaintiffs for condonation of delay justifies the passing of the impugned order dated 07.04.2018 by learned lower appellate Court. Immediately, after rejection of the plaint, the respondent-plaintiffs had preferred a revision petition before this Court, which was though dismissed as withdrawn on 28.09.2017. Therefore, this Court finds that the respondent-plaintiffs had been pursuing their revision petition under the bonafide belief that against the order dated 10.02.2016 passed by the civil Court, whereby their plaint was rejected, the remedy is to file a revision petition.

In *Oriental Aroma Chemical Industries Limited's case (supra)*, Hon'ble Supreme Court, while condoning the delay has held that the Courts are bestowed with power to condone the delay, if sufficient cause is shown and the term "sufficient cause" is elastic enough to enable the Courts to apply the law in a manner which subserves the ends of justice. No hard and fast rule can be laid down in dealing with the applications for condonation of delay.

Though liberal approach should be adopted in condoning delay of short duration, but at the same time, a stricter approach is required to be adopted in cases of inordinate delay. The relevant part of the said judgment as mentioned in paragraph Nos.14 and 15 is reproduced as under:

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - **Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106.**”

In view of the above, this Court finds that no interference is warranted in the impugned order dated 07.04.2018 passed by learned lower

appellate Court, whereby the application under Section 5 of the Limitation Act filed by respondents No.1 and 2-plaintiffs has been allowed and the delay in filing the appeal has been condoned.

Accordingly, the impugned order dated 07.04.2018 passed by the lower appellate Court is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

April 27, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No