

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3785 of 2015(O&M)
Date of Decision-13.11.2018

Ram Lal Nagpal (since deceased) through his LRs

... Petitioners

Versus

Avtar Singh and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Aashna Gill, Advocate for
Mr. Aman Pal, Advocate
for the petitioners.

Mr. Atul Lakhanpal, Sr. Advocate with
Ms. Neha Lakhanpal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 10.02.2015 passed by District Judge, Panchkula vide which application under Section 5 of the Limitation Act filed along with appeal was dismissed and as a consequence of the same, appeal was also dismissed being time barred.

[2]. Brief facts of the case are that the plaintiff filed a civil suit for symbolic possession by way of specific performance of agreement to sell dated 03.01.2005 in respect of suit land. Permanent injunction was also sought, restraining the defendants from alienating the suit property. It was alleged that defendant No.2 being attorney of defendant No.1 entered into agreement to sell with Ram Pal Nagpal predecessor-in-interest of the

petitioners on 03.01.2005 for a sale consideration of Rs.40,000/- per biswa. After receiving an earnest amount of Rs.10,000/-, he agreed to execute the sale deed on 16.09.2005. It was also agreed that the sale deed was to be registered after finalization of the pending case. Physical possession of the suit land was delivered to the plaintiff. Plaintiff also asserted that defendants kept on postponing the issue of execution of sale deed and plaintiff has spent more than Rs.50,000/- on the suit land towards development of the same. He also raised construction of room thereupon.

[3]. The suit was contested by the defendants/respondents on the ground that defendant No.1 never authorized defendant No.2 to sell his land. Execution of power of attorney in favour of defendant No.2 was denied being forged and fabricated. Similarly, receipt of earnest money was also denied.

[4]. Additional Civil Judge (Senior Division), Panchkula dismissed the suit with costs vide judgment and decree dated 06.09.2010.

[5]. Against the said judgment and decree, initially a second suit was filed for declaration in the Civil Court at Kalka. Instead of filing appeal against the aforesaid judgment and decree dated 06.09.2010, the suit was filed on the basis of wrong advice of the counsel. Later on, with the change of counsel, an application was filed for withdrawal of the suit with permission to

file fresh case. In the meanwhile, plaintiff died on 02.09.2012 and his legal representatives pursued the proceedings. The earlier Advocate withdrew his power of attorney in Court at Kalka and second Advocate was engaged on 25.10.2012. At the time of arguments, Advocate withdrew the suit on 30.04.2014. Thereafter, certified copy of judgment and decree dated 06.09.2010 was obtained and the appeal was filed on 09.05.2014 along with application under Section 5 of the Limitation Act against the original judgment and decree dated 06.09.2010. In the aforesaid process, delay of 1300 days has occurred in filing the first appeal against the judgment and decree dated 06.09.2010.

[6]. Learned counsel for the petitioners submitted that delay has occasioned due to wrong advice by the counsel in filing the second suit for declaration instead of filing the first appeal before the Lower Appellate Court. The plaintiff was sufficiently prevented from filing the first appeal due to wrong advice of the counsel in filing second suit for declaration in the Court at Kalka which had no jurisdiction. During the intervening period, the plaintiff himself died on 02.09.2012 and his legal representatives (petitioners) were brought on record. With the withdrawal of the power of attorney of earlier counsel, new Advocate was engaged on 25.10.2012 and he ultimately withdrew the suit on 30.04.2014 after assessing all pros and cons of the litigation. Thereafter, certified copy of judgment and decree dated 06.09.2010 was

obtained. An appeal was filed on 09.05.2014. Petitioners cannot be left high and dry without any remedy in law. Learned counsel for the petitioners further submitted that the Courts are always liberal so as to advance cause of justice instead of dismissing the appeal on technical grounds.

[7]. On the other hand, learned Senior Counsel for the respondents vehemently opposed the prayer for condonation of delay of 1300 days in filing the first appeal on the premise that in the agreement to sell dated 03.01.2005, defendant No.2 was shown to be owner of the property, whereas in the civil suit, defendant No.2 was shown to be general power of attorney of defendant No.1. However, in the evidence led by the plaintiff, defendant No.2 was shown to be tenant. Learned Senior Counsel submitted that plaintiff himself was an Advocate who died later on and therefore, contradictory and divergent stand taken by the plaintiff in the suit would negate the ingredients of sufficient cause for condonation of delay of 1300 days in filing the first appeal.

[8]. I have considered the submissions made by learned counsel for the parties to some extent.

[9]. At this stage, consideration of plea on merits of the case may prejudice the case of either sides in appeal. The plea raised by learned counsel for the respondents at best can be appreciated by the Lower Appellate Court in case the delay in filing the appeal is condoned. This revision petition is aimed to

seek condonation of delay of 1300 days in filing the first appeal on the premise that due to mistaken legal advice, the second suit was filed instead of challenging the judgment and decree dated 06.09.2010 by way of appeal before the Lower Appellate Court. The second suit for declaration remained pending for some time under a legal advice and was ultimately withdrawn on 30.04.2014. The second suit remained in existence upto 30.04.2014 when the same was withdrawn. During intervening period, there was death of original plaintiff and legal representatives/petitioners were impleaded and second counsel was engaged. Evidently, no third party interest has been created during pendency of the second suit.

[10]. In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399** and **State of Rajasthan and another Vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805**, it was held that the merits of the case cannot be pitted against mere technicalities and the same cannot be thrown at the verge of technicalities. In **Lanka Venkateshwaru (Dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, the Hon'ble Apex Court even condoned the delay of 3703 days in bringing on record legal representatives of deceased respondent and it was held that delay was due to insufficiency, inaptitude and negligence of Government Pleader.

In **Collector, Land Acquisition Anantnag Vs. Mst. Katiji,**

(1987) 2 SCC 107, the Hon'ble Apex Court held that when the technicality is pitted against substantial justice, merit and cause of substantial justice should prevail. The delay was not held to be such which may deprive the petitioner from exercise of discretion by the Court for condoning the delay. It was also held that at the most, the cause espoused by the petitioner in the first appeal can be decided on merits.

[11]. It is true that there are some omissions on the part of the petitioners in not filing the appeal in time, rather the second civil suit for declaration was filed in the Court at Kalka. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner so as to subserve the ends of justice. The principle underlining the aforesaid observation is the emphasis that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. There cannot be any straight jacket formula to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its own facts and circumstances in which the party acts and behaves. 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 redressal of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is made out for not availing the remedy within the stipulated time. The stricter approach in not condoning the huge delay has to be tested on the same parameters and of course, on the basis of sufficiency of grounds for condonation of such delay.

[12]. Evidently, in the present case, judgment and decree was passed on 06.09.2010, against which no appeal was filed before the Lower Appellate Court in time, rather a second independent suit for declaration was filed in the Court at Kalka which had no jurisdiction. During intervening period, there was death of original plaintiff and with the change of counsel, the suit was ultimately got dismissed as withdrawn on 30.04.2014. There may or may not be a protection in favour of the petitioners with the aid of Section 14 of the Limitation Act, but still cause of justice cannot be allowed to be thrown at the verge of technicalities, particularly when there is no involvement of third party interest during the intervening period and the defendants/respondents can be compensated with adequate costs. There should be liberal, pragmatic and justice oriented approach while dealing with the application for condonation of delay. In **Esha Bhattacharjee's case (supra)**, the Hon'ble Apex Court after

considering the ratio laid down in **B. Madhuri Goud Vs. B. Damodar Reddy, (2012) 12 SCC 693** considered the case of condonation of delay of 2449 days.

[13]. For the reasons recorded in **Esha Bhattacharjee's case (supra)** and **Lanka Venkateshwaru (Dead) by LRs case (supra)**, this revision petition is allowed. Impugned order dated 10.02.2015 passed by District Judge, Panchkula is hereby set aside, thereby condoning the delay of 1300 days in filing the first appeal before the Lower Appellate Court, however subject to payment of costs of Rs.15,000/- to be paid by the petitioners to the respondents. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court. Both the parties are directed to appear before the Lower Appellate Court on 05.12.2018.

(RAJ MOHAN SINGH)
JUDGE

13.11.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No