

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223

CR-4032-2015 (O&M)

Date of Decision: 11.05.2018

Surjit Kaur and another

.....Petitioners

Versus

Sukhjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Sekhon, Advocate
for the petitioners.

Mr. Ankit Duggal, Advocate
for respondent No.1.

Amit Rawal, J. (Oral)

The petitioner/defendant is aggrieved of the impugned order dated 23.09.2014 whereby the application seeking condonation of delay in filing the appeal against the judgment and decree dated 15.02.2011 has been dismissed.

Mr. P.S. Sekhon, learned counsel appearing on behalf of the petitioners submitted that the respondent-plaintiff instituted the suit seeking possession of the suit property i.e. civil suit No.414 of 2006 which was decreed by the court on 15th February 2011. The counsel engaged by the petitioners had gone abroad and could not file the appeal in time and thereafter they engaged another counsel and in this process the delay has

which no fault could be attributed to the applicants for non-filing of the appeal within time. The application was accompanied by an affidavit in the appellate Court supporting the claim. Though there was some kind of negligence on behalf of the applicants but the same could have been compensated in terms of certain terms and conditions which the court could have imposed. In support of this contention, he relied upon a judgment of the Hon'ble Supreme Court of India in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 Supreme Court Cases 649* and prayed that the present application may be allowed.

Mr. Ankit Duggal, learned counsel appearing on behalf of the respondent-plaintiff submitted that the application was bereft of any reasons. The explanation was not reasonable as to how the counsel left and in what manner the petitioners engaged the services of another counsel. No person can be permitted to take the plea of being ignorant to law and therefore, submitted that the present application may be dismissed being not maintainable.

I have heard learned counsel for the parties and am of the view that there is force and merits in the submissions and arguments of Mr. Sekhon, for, the reasons given in the application, though had not been supported by any evidence, but the fact of the matter is that the delay had occurred due to the change of counsel. The litigants do not know the intricacies of law. At the best they can approach the counsel for availing the remedies available for the purpose of vindication of their grievances. If the fraternity does not take it properly and in this process the delay has occurred, cannot be attributed to the litigants.

The principles called out in the judgment are as under:-

- “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.”

I am of the view that the present case falls in the aforementioned principles, though the petitioners were also required to pursue the case diligently.

This court in the interest of justice and to prevent miscarriage of justice, is of the view that the impugned order is not sustainable and hereby set aside.

The delay in filing the appeal is condoned.

Parties are directed to appear before the lower appellate Court and the lower appellate court would hear the appeal on merits. The appellate Court would decide the matter on merits subject to payment of ₹75000/- as costs which shall be the condition precedent.

Parties are directed to appear before the Lower Appellate Court on 10th of July, 2018. It is directed that the appellate Court will decide the matter as expeditiously as possible.

11.05.2018
W. Ansari/Seema

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No