

256 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.489 of 2017 (O&M)
Date of decision : April 05, 2018

Rakesh Duggal

..... Petitioner

Versus

Roopa Malhotra

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Amit Jhanji and Mr. Vaibhav Sahni, Advocates
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. Saurav Khullar, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 17.10.2016 passed by learned Addl. District Judge, Chandigarh, whereby in the first appeal, titled as “*Roopa Malhotra vs Rakesh Duggal*” delay of 605 days in filing the appeal was condoned.

The facts of the case as gathered from the file are that Rakesh Duggal-petitioner filed a suit for specific performance and permanent injunction and recovery against Roopa Malhotra-respondent, who happens to be her niece on the basis of agreement of sale dated 12.07.2004. In the said suit, defendant-respondent Roopa Malhotra, who was shown to be resident of Chandigarh appeared and filed written statement. From the

judgment dated 06.11.2013 passed by learned Addl. Civil Judge (Sr. Divn.), Chandigarh, it comes out that the defendant-respondent in the said suit failed to lead her evidence and her evidence was closed by orders, vide order dated 20.09.2013. Ultimately, the suit was decreed on 06.11.2013. It also comes out that thereafter an execution was filed by the plaintiff-decree holder in the year 2014, in which objections were filed by the defendant-J.D. on 02.08.2014. The objections were ultimately dismissed on 29.09.2015. Against the said order, defendant-J.D. approached this Court by way of filing CR No.3301 of 2016, which was withdrawn on 09.05.2016 as the defendant-J.D. wanted to avail appropriate remedy before the first appellate Court. Accordingly, the appeal was filed along with an application for condonation of delay of 605 days on 18.05.2015 i.e. few days after the withdrawal of the revision before this Court. The learned Addl. District Judge, Chandigarh, while referring to the case law on the point and the guidelines contained in the authority of Apex Court delivered in case of ***“Collector Land Acquisition Anand Nag and others vs Mustafa Katigi and others”***, AIR 1987 (SC) 1353, and considering the other case law was of the view that the appeal should not be thrown out on account of technicalities of law and the administration of justice requires that applicant should be given opportunity to contest the litigation on merits.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner has argued that in this case sufficient cause was not there. It is stated that even in the main suit, no evidence was led by the defendant-respondent, which shows that the suit

was not contested and was half utterly contested by the defendant-respondent.

Learned counsel for the petitioner has also referred to the power of attorney executed by the defendant-J.D. in favour of his counsel on 31.05.2014, showing that on the said date, the defendant-respondent had the knowledge of the decision of the decree passed by the Civil Court, even if, it is assumed that learned counsel appearing for her did not inform her about the passing of the decree. In any case, at the time of arguments in the main civil suit, the defendant-respondent was represented by the counsel. It is contended that even if the knowledge is counted from 31.05.2014, there is no ground to hold that the defendant-respondent was not informed by her counsel and for this reason, she could not file the appeal in time. The facts remain that the defendant-respondent had engaged the counsel on 31.05.2014 and objections were filed before the Executing Court on 02.08.2014 and were dismissed on 29.09.2015. The limitation is not sought to be condoned on the ground that she was pursuing remedy before the Executing Court. The application filed under Section 5 of the Limitation Act, 1963 (Annexure P-3) shows that the thrust of the ground for condonation of delay is that the defendant-respondent is mainly resident of Palampur, Himachal Pradesh and prior to passing of the decree, her previous counsel did not inform her about the passing of the decree and thereafter, she was in depression and after regaining senses, she contacted her counsel and filed the appeal with a delay of 605 days.

Learned counsel for the petitioner has relied upon the guidelines laid down by Hon'ble the Supreme Court delivered in case of

“Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others”, (2013) 12 Supreme Court Cases 649, regarding the principle governing the condonation of delay. The said guidelines are reproduced as under:

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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.*

21.9. (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.*

21.10. (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.*

21.11. (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.*

21.12. (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.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a*

half hazard 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.

22.2. *(b) 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.*

22.3. *(c) 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.*

22.4. *(d) 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.”*

A perusal of the guidelines shows that it is not that in every case the delay should be straightway condoned without considering the grounds on which it is sought to be condoned. It depends upon the facts of each case. If the present case is examined in the light of the aforesaid guidelines, it comes out that the ground put forward by the defendant-respondent is concocted. Before the trial Court, she was represented by the counsel. Even after the passing of the decree, she engaged the counsel on 31.05.2014 and filed the objections before the Executing Court and contested the same. After the dismissal of the objections, she even approached this Court. Therefore, now, she cannot claim that her counsel did not inform her about the passing of the decree.

As discussed above, she does not seek condonation of delay on

the ground that she was pursuing remedy before the Executing Court. Therefore, that period should be excluded. In the application, the entire blame is sought to be put on the previous counsel for not informing her about the decision of the civil suit. In this way, the application is not bonafide and concocted ground has been put forwarded. The grounds are also not bonafide. Though, the approach of the Court in condoning the delay is liberal in case of short delay but in cases of long delay, the balance has to be struck between the provisions of Limitation Act, 1963 and in the interest of justice. It is not the law that anybody can come at any time and file an application and the delay should be straightway condoned without looking into the grounds, on which it was sought.

Therefore, in the circumstances, I am of the view that the respondent-defendant was aware about the pendency of the suit and decision thereof. She even contested the execution. Therefore, she cannot say that the counsel did not inform her about the decision of the civil suit. Thus, merely on the ground that the administration of justice requires that the matter should be decided on merits, delay cannot be condoned, particularly, when the defendant-respondent, during the trial had not led any evidence and the case was decided, practically, on the basis of no evidence by the defendant-respondent.

It being so, the impugned order is not sustainable in the eye of law. Consequently, the same is hereby set aside. Accordingly, the application for condonation of delay of 605 days in filing the appeal also stands dismissed and so is the appeal filed before the learned Addl. District Judge, Chandigarh.

As such, the present revision petition is allowed. Since, the main revision petition has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

April 05, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes