

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5523 of 2015 (O&M)

Date of Decision.17.11.2018

Ajit Singh @ Jeet Singh

.....Petitioner

Vs

Mukhtiar Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Parveen Kataria, Advocate for
Mr. Sumit Puri, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is in revision petition before this Court challenging the order dated 03.03.2015 whereby the application for condonation of delay about 8 ½ months in filing the appeal against the judgment and decree dated 03.02.2012 passed by the trial Court, has been dismissed.

Mr. Ashok Bhardwaj, learned counsel appearing on behalf of the petitioner submitted that the petitioner had sufficiently explained the reasons for delay in filing the appeal but despite that the application was dismissed. The petitioner was not in good health, therefore, delay aforementioned occurred. The Courts ought to have adopted a liberal approach in deciding the applications for condonation of delay, thus, prays for setting aside the order under challenge.

Mr. Kataria for Mr. Sumit Puri, learned counsel appearing for the respondent supported the order passed by the lower Appellate Court on the premise that the delay aforementioned was not sufficiently explained, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. While deciding the application for condonation of delay, Courts ought to have adopted a liberal and pragmatic approach, for, the Courts are not supposed to legalise injustice but are obliged to remove injustice. 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. This view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649** wherein the principles applicable to an application for condonation of delay are culled out, which are reproduced 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 scrutinised 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.

In view of the observations made above, the impugned order dated 03.03.2015 is set aside and the lower Appellate Court is directed to decide the appeal on merits, subject to payment of costs of ₹5000/- to be paid to the respondent-defendant, which shall be condition precedent. If the costs so imposed is not paid, the order under challenge shall stand restored.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

November 17, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No