

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

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**CR No.5869 of 2018 (O&M)
Date of Decision : 21.09.2018**

Rajinder Parshad

....Petitioner

VERSUS

Gurdev Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Karanjeet Singh Brar, Advocate for the petitioner.

B.S. WALIA, JUDGE .,

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 21.03.2014 passed by the learned Additional District Judge, Bathinda dismissing the application under Section 5 of the Limitation Act for condonation of delay in late filing of the appeal.

2. Perusal of the impugned order reveals that appeal against the judgment and decree dated 26.05.2012 was filed on 16.08.2012 along with an application for condonation of delay on the ground that the petitioner-appellant had fallen ill due to jaundice and had remained confined to bed for more than two months w.e.f. 10.05.2012 to 25.07.2012 and as such could not contact his counsel, therefore, was not aware about the passing of the impugned judgment and decree and came to know about the same only on 25.07.2012. Thereafter, he applied for a certified copy of the judgment and decree on the same day and on obtaining the same on 08.08.2012 filed appeal on 16.08.2012, therefore, delay of more than three months was due to unavoidable circumstances, consequentially, the same was liable to be condoned.

3. Learned Additional District Judge, Bathinda took into account the stand of the respondent that the petitioner-appellant had failed to explain the delay in filing the appeal, besides, had failed to produce any medical certificate issued by the doctor and that in the circumstances the delay could not be condoned. The learned Additional District Judge in arriving at the aforementioned conclusion took into account various decision of different Courts i.e. **Krishan Dhiman vs Mahesh Bhatia 2009(1) RCR (Civil), 299** to the effect that delay could not be condoned on compassionate/ equitable consideration or where the conduct of the parties seeking condonation appeared to be callous or negligent, **Seeta Ram vs Sridhar 2007 (2) CCC, 250 (Allahabad)** wherein it has been held that when sufficient and proper reasons are not assigned for not approaching the Court in time, the Court must refuse to condone delay, **Gram Panchayat Malout vs Prem Singh 1998 (1) PLJ 552** in which it has been held that where definite rights have accrued to a party, then the same ought not to be taken away except on sufficient and good cause being made out by the applicant coupled with bona fide action being shown to have been taken by the applicant, **Sahrna Gowda vs Naraina 1996(1) CCC 695 (Karnataka)** wherein it has been held that over sympathetic approach which results in doing injustice to the other party is not proper and that discretion in condoning the delay is to be exercised in appropriate and deserving cases only after examining as to whether any useful purpose would be served if delay is condoned.

4. In the aforementioned background, the learned ADJ took into account the petitioner-appellant's contention of his suffering from jaundice and being confined to bed for more than two months, therefore being unable to contact his counsel and coming to know about the judgment and decree only on 25.07.2012.

However, during cross-examination, the falsity of the stand of the petitioner came

Out as the petitioner appellant admitted that he was regularly appearing before the

learned Lower Court and on the day of pronouncement of the judgment, he was very much present in Court and the judgment was pronounced in his presence. However, he showed ignorance about the fate of the case and further stated that he was suffering from T.B. The learned Additional District Judge, Bathinda held that it was settled law that a person who suppressed facts from the Court was not entitled to any discretionary relief in view of the decision of Hon'ble the Supreme Court in **Balwant Singh vs Jagdish Singh and others, 2010 (4) CCC, 551**. In the aforesaid decision it was held that a Court must take into consideration the conduct of the parties as well as bona fide reasons for condoning delay and a person seeking the aid of the Court for exercising its discretionary powers is expected to state correct facts and not lies before the Court. The learned Additional District Judge, Bathinda also relied upon the decision of Hon'ble the Supreme Court in **Pundlich Jalm Patil, Part-1 by LRs. vs Executive Engineer Jalgaon Immediate Project and another, 2009 (1) PLR 128** wherein it was held that incorrect statement made in the application seeking condonation of delay itself was sufficient to reject the application without any further inquiry. Learned Additional District Judge, Bathinda held that the pleadings of the applicant-appellant were not in consonance with the evidence adduced by him and that while in the application he had stated that he was suffering from jaundice, during cross-examination, he stated that he was suffering from T.B. Besides, no medical certificate was produced by the petitioner on record to show his illness. Accordingly, the application seeking condonation of delay was dismissed.

5. I have considered the submissions of learned counsel for the petitioner and am of the view that no case whatsoever is made out warranting interference with the well reasoned order passed by the learned Additional District Judge, Bathinda. Admittedly, the judgment was pronounced on

Court on the date of pronouncement of the judgment but feigned ignorance with regard to the decision. Thereafter, he claimed to have remained ill due to jaundice and of having learnt about the adverse decision only on 25.07.2012 when he went to meet his counsel where after he applied for the certified copy of the judgment. However, the fact remains that while in the application, the petitioner had stated that he was suffering from jaundice, in cross-examination, he has stated that he was suffering from tuberculosis. Besides, no medical certificate was attached in support of the petitioner appellant suffering from any illness.

6. In the circumstances, I am of the considered view that no case whatsoever is made out warranting inference with the well reasoned order passed by the learned Additional District Judge, Bathinda.

7. In the circumstances, the revision petition being bereft of merit is dismissed in limine.

September 21, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No