

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

CR No.7592 of 2016 (O & M)

Date of Decision:-19.2.2018

Ram Kumar Vasesi

...Petitioner

Versus

Shiv Kumar Vasesi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Jolly, Advocate
for the petitioner.

Mr. Aman Mehta, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

Petitioner-plaintiff, an appellant before the lower Appellate Court, preferred an appeal against the order dated 3.12.2014 whereby the contempt application under Order 39 Rule 2-A filed alongwith the suit seeking partition of the suit property which was barred by delay of 26 days has been dismissed.

Mr. Munish Jolly, Advocate learned counsel appearing on behalf of petitioner submitted that a suit for claiming partition of the suit

property was filed which was decreed by the trial Court on 27.11.2014. However, during the pendency of the aforementioned suit, there was an interim order dated 30.9.2005 (Ex.P1), which according to his client was purportedly violated compelling him to move an application dated 26.4.2006 (Annexure P-2) under Order 29 Rule 2-A of the Code of Civil Procedure. Counsel for the petitioner had noted down the wrong date as 3.1.2015 instead of 3.12.2014 from previous order dated 27.11.2014 resulting into dismissal of application. The petitioner preferred an appeal against the said order along with application for condonation of delay. In this regard reference has been made to the zimni orders dated 03.12.2014 wherein the presence of the counsel has been marked as 'counsel for the parties'. He submitted that the aforementioned presence has been read as if both the counsel were represented. Even otherwise parties should not be made suffer on behalf of the counsel in view of the judgment rendered by the Hon'ble Supreme Court in **Rafiz and another vs. Munshi Lal and another AIR 1981 page 1400**. The other party could have been compensated in terms of money as the appeal was likely to succeed on the merits in case the delay had not been opposed or condoned. In support of his contentions he relied upon the ratio decidendi culled by Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others, 1987 AIR SC 1353** and also referred to **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others 2013(4) RCR (Civil) 785** wherein while condoning the delay the Hon'ble Supreme Court in paragraph 15 culled

out the following principles :-

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

(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 encapsule 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.”

and prays for setting aside the impugned order.

On the other hand, Mr. Aman Mehta, Advocate learned counsel appearing on behalf of respondents-defendants submitted that no plausible explanation has been given in the application of each and every day in filing the appeal, therefore, the application was bereft of any reasoning and rightly has been dismissed. Even in this Court while extracting the order dated

3.12.2014, the presence part is not typed/extracted, therefore, such type of litigant should not be entertained and revision petition is liable to be dismissed.

The order under challenge is perfect, legal and justified and do not call for any interference as the explanation given in the application did not weigh in the mind of the Court below.

I have heard learned counsel for the parties and appraised the paper book.

The paramount consideration of the Court should be to do the substantial justice and not to apply the strict principles in the matter of condonation of delay. There is distinction between inordinate delay and a delay. Here the appeal was not barred by any delay of number of years but was only of 26 days which in my view ought not to have been opposed by the respondents muchless should have been pragmatically considered by the Court below.

For the reasons aforementioned, I do not intend to express further on the particular column i.e. 'counsel for the parties', which sometimes passed in routine manner not giving any advantage or disadvantage to any of the parties. The impugned order, thus, in my view is not sustainable and hereby set aside.

The revision petition is accordingly allowed.

The appeal of Court below is ordered to be restored and be decided on merits. Counsel for the parties are directed to appear before the lower Appellate Court on 28.3.2018. However, subject to cost of

Rs.10,000/- which shall be condition precedent to be paid to the counsel for the respondents who has appeared in the High Court.

February 19, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No