

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

CR No.858 of 2011(O&M)

Date of decision: 6.10.2018

Sharwan Kumar and others

.....Petitioners

VERSUS

Ved Parkash and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. C.B. Goel, Advocate for the petitioners.

Mr. Naveen Gupta, Advocate for the respondents.

REKHA MITTAL, J.

The present petition directs challenge against concurrent findings of fact by the Courts whereby application for eviction filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as 'the Act') from a shop situated at Railway Road opposite Sanatan Dharm Mandir, Narwana was dismissed by the Rent Controller vide order dated 30.08.2005. The appeal preferred by the unsuccessful petitioners did not find favour with the Appellate Authority, Jind.

Still feeling dis-satisfied, Sharwan Kumar and others filed the present petition initially in the year 2008 but finally refiled in December 2010. Along with the petition, an application (CM No.3486-CII of 2011) under Section 151 of the Code of Civil Procedure, 1908 (in short 'the Code') for condoning delay of about 880 days in re-filing the revision petition has been filed.

Counsel for the applicants-petitioners would urge that as there is delay in re-filing and not in filing the petition, the same may be condoned. It is further argued that delay in re-filing the petition is not intentional much less mala fide. According to counsel, meritorious claim cannot be rejected at the threshold on technical considerations. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Chandan Singh Vs. National Insurance Co. Ltd. and another, 2015(1) RCR (Civil) 920.** In addition, it is argued that a party should not be allowed to suffer on account of delay in re-filing the appeal/revision nor the same should be allowed to enure to benefit of the contesting party. Reference has been made to judgments of this Court **Dinesh Kumar Vs. Chanderkala and another, 2011(4) PLR 211** and **Bhajan Kaur and others Vs. Parsin Kaur and others, 2016(1) PLR 760.**

Counsel for the contesting respondents, on the contrary, would argue that averments raised in the application do not constitute a sufficient ground much less justifiable reason to condone a huge delay of more than 2 years in re-filing the petition. It is argued that the petitioners are not ordinary much less illiterate litigants rather one of them is a practising Advocate at Narwana. It is argued with vehemence that as the petitioners have miserably failed to make out a case justifying delay of 880 days in re-filing the petition, application for condonation of delay is liable to be dismissed and resultantly, the petition is liable to be dismissed being barred by limitation. In support of his contentions, he has relied upon judgment of Hon'ble the Supreme Court **H. Dohil Constructions Company Pvt. Ltd. Vs. Nahar Exports Limited and another, (2015) 1 Supreme Court Cases 680.** Reference has also been made to judgments of this Court, **Smt. Ram Piari Kaushal Vs. State of Punjab through**

Collector, Rupnagar and others, 2012 SCC OnLine 20418 and
Mohinder Pal Vs. General Public and another, 2017 SCC OnLine 467.

I have heard counsel for the parties, perused the application filed by the petitioners seeking condonation of delay of 880 days in re-filing the petition and reply thereto filed by the contesting respondents.

Before advertng to the submissions made by counsel for the parties, it is appropriate to deal with the judgments relied upon by counsel for the parties. In **Chandan Singh's case** (supra), Chandan Singh filed revision before National Commission against the order of State Commission and revision was filed after delay of 39 days. The same was dismissed by the National Commission applying certain decisions of the Apex Court referred to in the impugned order. Hon'ble the Supreme Court has held that keeping in view the object and intentment of the Consumer Protection Act, 1986 enacted by the Parliament for expeditious disposal of the consumer disputes, the belated revision petition ought not to be rejected only on technical ground since it will defeat the primary object of the Consumer Protection Act. Further held that the National Commission has viewed the matter technically and rejected the revision petition, not entertaining the application for condonation of delay and without applying the catena of decisions of this Court wherein this Court has held that the Courts and Tribunals are required to examine the cases of the litigants on merits and not reject the cases at the threshold on technicalities. The National Commission has failed to examine the sufficient and good cause shown in the application for condonation of delay, therefore, declining to condone the delay is not correct while exercising the discretionary powers keeping in view the catena of decisions of this Court.

In **Dinesh Kumar's case** (supra) decided by this Court, there was delay of 1371 days in re-filing the appeal. The delay had occurred on account of negligence of counsel's clerk. It was held by this Court that a poor/prudent litigant cannot possibly be allowed to suffer on account of inaction and negligence on the part of his Advocate. No motive can be attributed to the applicant that he would be benefited in any manner by late re-filing the appeal. Similarly, in **Bhajan Kaur and others case** (supra), there was delay of 821 days in re-filing the appeal due to mistake on the part of clerk of counsel duly supported by affidavit of clerk of counsel and in those circumstances, the same was condoned by this Court.

Hon'ble the Supreme Court in **H. Dohil Constructions Co. Pvt. Ltd.'s case** (supra) has set aside the order passed by the High Court condoning delay of about 5 years in re-filing the appeal, quoted thus:-

“It is true that the delay in filing the appeals was only 9 days and that the longer delay was only relating to re-filing of the appeal papers. But even if it is related to re-filing of the appeals, the net result is that the appeals could be taken into records only when such a delay in re-filing is condoned. Therefore, if the re-filing had been made within the time granted by the Registry of the High Court, no fault can be found with anyone much less with the party concerned or whomsoever was entrusted with the filing of the papers into the registry. But when an enormous delay of nearly five years occurred in the matter of re-filing, it definitely calls for a closer scrutiny as to what was the cause which prevented the party concerned from re-filing the papers in time to enable the Registry to process the papers and ascertain whether the

papers were in order for the purpose of numbering the appeals.

The applicants simply by throwing blame on their previous counsel, whose identity was not disclosed, claimed that irrespective of the enormous delay of 1727 days in re-filing the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals. It is not possible to countenance such a stand made on behalf of the respondents. In this context the maxim *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand.

The failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the re-filing can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents. Further, when the respondents have not come forward with proper details as regards the date when the papers were returned for re-filing, the non-furnishing of satisfactory reasons for not re-filing of papers in time and the failure to pay the Court fee at the time of filing of appeal papers on 06.09.2007, the reasons which prevented the respondents from not paying the court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bona fides in its approach.”

In **Smt. Ram Piari Kaushal's case** (supra), there was delay of 2229 days in re-filing the appeal. It is alleged in the application that while counsel for the applicant-appellant shifted his residence-cum-office from Panchkula to Chandigarh, during shifting, file of the case, which had been returned by the Registry with some objections, was inadvertently kept in files of decided cases in March 2004 and it was only on 24.05.2010 that Clerk of counsel came across this file while locating some other old decided cases. This Court rejected the application with the following findings:-

“If said long delay is condoned on such vague, general and specious assertion, the law of limitation would have to be repealed. This is a standard excuse being advanced almost in every other case to seek condonation of long delay in re-filing the appeal. It is averred most of the times that the paper book was misplaced in files of admitted cases or in files of decided cases or in some other brief. Such excuse cannot be accepted to condone long delay. It is also worth mentioning that the appellant would not have remained silent for more than six years if this had been the real reason. The appellant would have contacted the counsel to know the status or fate of the appeal. It is difficult to accept that the appellant also did not communicate with the counsel to know the status or fate of the appeal during this long period of more than six years. It is not the case of the applicant-appellant that despite efforts, the paper book could not be traced. On the other hand, no effort was at all made to trace the paper book and it was only incidentally traced after more than 6 years while locating

some other case. Complete silence on the part of appellant for more than 6 years cannot be condoned.”

This Court in **Mohinder Pal's case** (supra) refused to condone delay of more than 3 years in re-filing the appeal by relying upon judgments of this Court **Darshan Singh Vs. Surjit Singh, 2008 (2) PLR 336, Bhagwana Vs. Tara Chand and others, 2008 (2) PLR 73** and **Krishan Dev Dhiman Vs. Mahesh Bhatia and others, 2008 (4) PLR 23**.

In the said judgments, it has been noticed that 40 days is total limit which is fixed for re-filing and it is bracketed for not exceeding 10 days at a time under the High Court Rules and Orders Volume 5 Chapter-I, Part-A. Section 3 of the Limitation Act was also noticed to hold that valid reasons have to be given for retaining the file for a period of years and delay in re-filing has to be satisfactorily explained and where there is negligence as such the delay cannot be condoned. It was held that law of limitation is to be enforced and it is not mere a formality.

In the case of **Municipal Corporation of Delhi v. International Security and Intelligency Agency Ltd. (2004) 3 Supreme of Court 250** noticed in **Mohinder Pal's case** (supra), application for condonation of delay of 688 days in re-filing the appeal was dismissed.

Reverting to the case at hand, relevant averments from paras 1 to 4 of the application needs to be extracted for ready reference:-

- “1. That the above mentioned Revision Petition was filed by the petitioners in this Hon'ble Court on 25th February, 2008 which was returned by the Registry with certain objections on 26.2.2008.
2. That the counsel for the petitioners refiled the same after complying with the objections on 21.5.2008 when

again the Registry returned the same on 9.6.2008 with certain objections.

3. That after the Revision Petition was returned on 9th June, Revision Petition was not refiled which is now being refiled.
4. That it may be submitted that there is a delay of about 880 days in refiling the above mentioned Revision Petition. That said delay has been caused due to sheer oversight and mistake on the part of the petitioners as after the Revision Petition was returned by the Registry, the record of the case was taken by them from their counsel and the same remained lying at their house and it was only now at the start of the month of December, 2010 that it was noticed by the petitioner No.1 that the file of the case was lying at his house/office and on this ground, the Revision Petition could not be refiled. So, the delay in the refiling of the Revision Petition is bonafide and unintentional and due to the reasons explained above and for no other reasons.”

The revision petition was returned on 09.06.2008 and thereafter, it was re-filed in December 2010, after about 2 years and 6 months. The applicants have admitted that delay is due to mistake on their part as records of the case was taken by them from their counsel and the same remained lying at their house. A plain reading of the averments raised in para 4 of the application leaves no manner of doubt that the applicants were neither vigilant nor diligent to pursue their remedy who on the contrary awoke from slumber after a period of more than 2 years to

remove the objections raised by the Registry and re-filed the revision. As in the case at hand, there was complete inaction and negligence on the part of the applicants, they are not entitle to indulgence of the Court in exercise of discretionary jurisdiction. The applicants have miserably failed to make out a case much less a sufficient and justifiable reason to condone huge delay of 880 days in refiling the revision when examined in the light of judgment of Hon'ble the Supreme Court **H. Dohil Constructions Company Pvt. Ltd.'s case** (supra). In this view of the matter, the applicants cannot derive any advantage to their contention from the judgments cited by their counsel decided by Hon'ble the Supreme Court and this Court, in the peculiar facts and circumstances involved therein. I would hasten to add that this Court is not oblivious of the fact that the Court has to adopt liberal, pragmatic and non-pedantic approach while dealing with the question of condonation of delay. I am aware of judgments on the issue that meritorious claims may not be rejected at the threshold on technical considerations. However, as there is gross negligence displayed by the applicants/petitioners, they have rendered them ineligible to get any relief on equitable consideration.

For the foregoing reasons, the application for condoning delay of 880 days in re-filing the revision is dismissed. As a natural corollary, the petition is dismissed being barred by limitation.

OCTOBER 6, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no