

In the High Court of Punjab and Haryana at Chandigarh

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**CR No. 791 of 2017 (O&M)
Date of decision: 13.11.2018**

ROSHAN LAL AND CO.

.....petitioner

Versus

BLOCK DEVELOPMENT & PANCHAYAT OFFICER

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ravish Bansal, Advocate,
for the petitioners.

Mr. Arun Kaundal, DAG, Punjab
for respondents No.1,3, 4 and 5.

RAJ MOHAN SINGH, J.(oral)

Petitioner has preferred this revision petition against the order dated 1.11.2016 passed by the Additional District Judge, Faridkot, whereby the application under Section 5 of the Limitation Act seeking condonation of delay of 162 days in filing the first appeal was dismissed.

Plaintiff filed a suit for declaration to the effect that he is entitled to recover Rs.5,66,614/- on account of mid day meals supplied by the plaintiff to the pupils of different schools. The entitlement of the petitioner was endorsed by the trial Court that he was entitled to recover the amount from the defendants for providing meals to the pupils, but owing to the form of the suit i.e. for declaration and mandatory injunction in place of recovery, relief was declined and the suit was held to be not maintainable

vide judgment and decree dated 2.5.2014 passed by the Civil Judge (Sr.Divn.), Faridkot.

Appeal was preferred before the lower Appellate Court along with an application under Section 5 of the Limitation Act. There was a delay of 162 days in filing the appeal. Petitioner sought to explain the delay on the strength of the medical reports Ex.A-1 to Ex.A-3. Petitioner was operated for open heart surgery on 23.5.2014. As per Ex.A-1, the petitioner was hospitalised from 21.5.2014 to 30.5.2014 for a period of 9 days. The lower Appellate Court dismissed the application primarily on the ground that even if factum of hospitalisation and surgery is admitted, further delay beyond 30 days was not explained by the petitioner. The factum of ailment, with which the petitioner was suffering from, could not be denied. The sufficiency of reason beyond 30 days in filing the appeal was taken to be a fact while dismissing the prayer for condonation of delay of 162 days in filing the appeal. The Court can take judicial notice of the fact that in case of open heart surgery, no hard and fast presumption can be drawn that the patient would recover within a specified period. It depends upon many factors owing to the physical condition of the patient.

In view of observations made by the Hon'ble Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC**

399 and State of Rajasthan and another Vs. Bal Kishan Mathur (D) through LRS and others, 2013(4) CivCC 805,

delay in filing the appeal can be condoned as the meritorious matters cannot be thrown at the verge of technicalities.

During the course of arguments, learned counsel for the petitioner also submitted that the trial Court proceeded to decline the relief of recovery to the plaintiff only on the basis of form of the suit, otherwise his entitlement was duly endorsed by the trial Court while deciding issue Nos. 1, 2 and 9 collectively. The petitioner is even ready to affix the requisite court fee payable before the trial Court as well as before the lower Appellate Court by way of moving an appropriate application before the lower Appellate Court.

This Court is not in a position to make any comment on the entitlement of the petitioner at this premature stage particularly when there is no lawful institution of the first appeal before the lower Appellate Court without condonation of delay.

In **Lanka Venkateshwaru (Dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363,** the Hon'ble Apex Court has even condoned the delay of 3703 days in the context of default in bringing legal representatives of concerned party on record. It was held that the delay had occasioned due to insufficiency, inaptitude and negligence of Government Pleader.

In Collector, Land Acquisition Anantnag Vs. Mst.

Katiji, (1987) 2 SCC 107, the Hon'ble Apex Court has also observed that there cannot be any uniform jacket to assess bona fide of the person in explaining each and every hours/minutes and seconds of delay. The merits of the case cannot be sacrificed at the threshold of technicalities. The delay is not such which will deprive the petitioner from exercise of discretion in his favour by way of condoning the delay by the lower Appellate Court. No third party interest has crept in. The delay can be condoned subject to payment of adequate costs by the petitioner in terms of Section 35-B CPC.

For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 162 days in filing the first appeal before the Lower Appellate Court. This revision petition is accordingly allowed, however, subject to payment of costs of Rs.10,000/- to be deposited by the petitioner in the High Court Bar Association Advocates Welfare fund. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court in the aforesaid context.

November 13, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking
Whether reportable

Yes/No
Yes/No