

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

CRR No.3624 of 2018 (O&M)

Date of Decision: December 6 2018

Gian Kaur

...Petitioner

Versus

Kamaljit Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Kumar Spehia, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal revision has been filed against the order dated 12.07.2018 passed by the Additional Sessions Judge, Jalandhar, whereby the appeal as well as application filed by the petitioner under Section 5 of the Limitation Act was dismissed.

2. In short, a complaint was filed by the respondent-complainant under Section 12(1) of the Protection of Women from Domestic Violence Act, which came to be allowed by the trial court by the order dated 03.11.2016 granting maintenance to the respondent-complainant and her son at the rate of ₹ 8000/- per month with 10% increase per year from the date of filing the complaint. This order was challenged in appeal by the petitioner herein along with an application under Section 5 of the Limitation Act. The Appellate Court by the impugned order dated 12.07.2018

dismissed the application filed by the petitioner and consequently, the appeal stood also dismissed, which order is under challenge in the instant criminal revision.

3. Notice of motion was issued in the matter, however, no one put in appearance on behalf of the respondent-complainant, despite service.

4. Learned counsel for the petitioner herein would argue that the Appellate Court without going into the merits of the appeal dismissed the application for condonation of delay whereas, the delay of 47 days has been duly explained. In support of his contention, learned counsel relies upon judgment rendered in **N. Balakrishnan vs. M. Krishnamurthy, 1992(2) RCR (Civil) 578.**

5. I have heard learned counsel for the petitioner and have also gone through the pleadings of the case.

6. It is settled principle that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is irrelevant. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, considerable delay can be condoned as the explanation itself may be satisfactory.

7. In her application, seeking condonation of delay, the petitioner herein submitted that *she is 80 years old and is suffering from many diseases. She could not meet her counsel and came to know about the order yesterday.*

8. While dismissing the application of the petitioner herein

seeking condonation of delay, the trial court has observed as under:

“I have considered the contentions and have gone through the file and come to the conclusion that the explanation put forth by the applicant with regard to delay in filing the appeal is not plausible and the court is not satisfied with the same. Admittedly, the impugned order was passed on 03.11.2016 and in the complaint, the applicant along with her other family members was arrayed as respondent No.1. The order was passed in the presence of her counsel. The son of the applicant was also a party to the said litigation. Thus, it cannot be believed that the applicant was not aware of the order under appeal. There is nothing on file to show that the applicant is 80 years old and that she is suffering from any diseases. There is a delay of 47 days in filing the appeal. Thus, the court found no plausible explanation regarding delay in filing the appeal. The application under Section 5 of the Limitation Act filed by the applicant is therefore dismissed.....”

9. Even before this court, no document has been placed on record in support of the contentions so raised that the petitioner is 80 years old and is suffering from many diseases. A perusal of the complaint (Annexure P-1) filed by the respondent-complainant before the trial court under Section 12 (1) of the Protection of Women from Domestic Violence Act reveals that apart from the petitioner herein (mother-in-law of the respondent-complainant), her three daughters and son were also arrayed as a party and all of them were made liable to pay maintenance to the respondent-complainant and her son, against the estate of her husband. A perusal of the

order dated 03.11.2016 passed by the trial court goes on to show that it was passed in the presence of counsel, who was representing the petitioner herein and her sons as well as the counsel, who was representing her three daughters respectively. The order of the trial court came to be challenged in appeal only by the petitioner herein, who is the mother-in-law of the respondent-complainant and none else, after a delay of 47 days *inter alia* on the ground of ignorance of the order so passed. Under these circumstances, the explanations put forth by the petitioner herein are not satisfactory and the application seeking condonation of delay has been rightly rejected by the Appellate Court. The case law that has been relied upon would not be applicable to the facts and circumstances of the present case. In the case of **N. Balakrishan vs. M. Krishnamurthy (supra)** the appellant therein on coming to know about the *ex parte* decree dated 28.10.1991, moved an application for setting aside the same, which was dismissed for default on 17.02.1993. Thereafter, he moved an application for having that order set aside only on 19.8.1995, as his Advocate failed to inform him that the application was dismissed for default on 17.02.1993. In that case, the Advocate of the appellant therein did not do anything in the court even after receiving his fee and getting some papers signed, including vakalatnama for resisting the execution proceedings. The appellant therein also moved the District Consumer Disputes Redressal Forum ventilating his grievance and claiming compensation against his advocate, which was allowed and it was under these circumstances, delay of 883 days was condoned. Whereas, in the present case, the petitioner herein showed ignorance of the order passed by the trial court, despite the fact that it was passed in the presence of the

counsels, who were representing the petitioner herein and her sons as well her three daughters respectively.

10. In view of the above, the criminal revision is hereby dismissed, being devoid of any merits.

December 6, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No