

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

LPA-1122-2018 (O&M)

Date of decision:- 25.07.2018

The State of Haryana and others

...Appellants

Versus

SI Nanak Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE

HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the appellants.

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KRISHNA MURARI, C.J.

This intra court appeal filed by the State of Haryana is directed against the judgement and order of the learned Single Judge dated 16.12.2016 partly allowing the writ petition filed by the respondent. Office has reported a delay of 400 days in filing and 72 days in re-filing the appeal.

2. The appeal is accompanied by an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay duly supported by an affidavit.

3. The reasons for delay as contained in Section 5 application are that: After the impugned judgement dated 16.12.2016 was passed by the learned Single Judge, it was forwarded to learned Advocate General, Haryana seeking his opinion for filing Letters Patent Appeal. He gave an opinion dated 31.03.2017 that it was not a fit case for filing an appeal. The said opinion was forwarded to Superintendent of Police, Palwal which was received in his office on 10.04.2017. Simultaneously, copy of the opinion was also forwarded to Legal Remembrancer, Haryana, who after examining the same, gave an opinion on 26.04.2017 differing with the opinion of the learned

Police, Haryana and Superintendent of Police, Palwal which was received in his office on 17.05.2017. On 06.06.2017, Superintendent of Police, Palwal forwarded a proposal to Director General of Police, Haryana to file a Letters Patent Appeal. On 18.08.2017, Director General of Police, Haryana forwarded the proposal to Additional Chief Secretary, Haryana to issue necessary instructions to the Advocate General to file the Letters Patent Appeal. A sanction under clause 20.4 (c) of LR manual was accorded and was forwarded to Director General of Police, Haryana and Superintendent of Police, Palwal. A copy of the sanction was also forwarded to Legal Remembrancer, Haryana with a request to issue necessary instructions to the Advocate General for filing the LPA. The Legal Remembrancer, Haryana is stated to have issued necessary instructions dated 12.01.2018 to the Advocate General to file the LPA and the same was forwarded to the office of Superintendent of Police, Palwal on 20.01.2018 and it is thereafter the present LPA was got prepared and is being filed. It is stated in the affidavit that delay in filing the appeal is due to administrative grounds and the same is not intentional.

4. A perusal of the facts, as reproduced hereinabove, goes to show that there has been a delay of almost two months at every stage during the movement of the file from one office to another for the purpose of opinion and sanction. There is no explanation for the said period.

5. It is no doubt correct that a litigant is not under an obligation to explain each and every day's delay in detail and the issue does not require a pedantic approach. What is required to be considered is that explanation submitted is bonafide and there exists sufficient cause for condoning the

6. Learned counsel for the appellants vehemently submitted that a liberal and justice orientated approach should be adopted particularly in matters involving the State and its instrumentalities, for the reason that delay is often caused on account of necessary and unavoidable formalities to be followed. It is also submitted that expression sufficient cause used in Section 5 of the Limitation Act is to be given an interpretation which suits the ends of justice. Reliance in support of the contention has been placed on the pronouncement of the Hon'ble Apex Court in the case of *Collector, Land Acquisition, Anantnag Vs Mst. Katiji* 1987(2) SCC 107.

7. It was next submitted that while considering issue of condoning the delay in a matter filed either by State or any of its instrumentality due regard be given to the fact that sufficient time is spent in the decision making process which is an institutional decision and, thus, Government ought not to be treated as any other private litigant. Learned counsel for the appellants in support of this contention has referred to the decision of the Hon'ble Apex Court rendered in the case of *State of Haryana Vs Chandra Mani and others* 1996(3) SCC 132 and *State of U.P. and others Vs Harish Chandra and others* 1996(9) SCC 309.

8. We have given our thoughtful consideration to the above noted arguments and the facts of the case.

9. It needs no emphasis that law of limitation is founded on public policy. The law of limitation has been enacted to ensure that the litigants approach the Court of law for seeking remedy without any unnecessary and unreasonable delay. At the same time, the Courts have been vested with the powers to condone the delay provided the litigant establishes

that he was precluded from availing the remedy within the prescribed period of limitation for a sufficient cause.

10. Hon'ble Apex Court in the case of *Maniben Devraj Shah Vs Municipal Corporation of Brihan Mumbai* JT 2012(4) SC 55 has observed that:

"The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay."

11. The issue being raised before us is no longer res-integra and stands settled by a catena of decisions.

12. As long back as 1962, Hon'ble Apex Court in the case of *Ramlal, Motilal and Chhotelal Vs Rewa Coalfields Ltd.* AIR 1962 SC 361 while interpreting the provisions of Section 5 of the Limitation Act held as under:-

"In construing Section 5 (of the Limitation Act) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration

which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice."

13. However, there was a departure from the earlier judgements in the case of *Collector, Land Acquisition, Anantnag* (supra) wherein it was observed as under:-

"The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a

pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos,

delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

In *N. Balakrishnan v. M. Krishnamurthy* [JT 1998 (6) SC 242 : 1998 (7) SCC 123], the Court went a step further and made the following observations:

"It is axiomatic 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 no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would

have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

14. In the case of *State of Nagaland Vs Lipok AO* 2005(3) SCC 752, after making reference to various precedents, the Apex Court proceeded to observe as under:-

"Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal."

15. The issue again came up for consideration before the Hon'ble Apex Court in the case of *Office of the Chief Post Master General & others Vs Living Media India Ltd. & another* JT 2012(2) SC 483. After considering the various earlier decisions, it was observed as under:-

"12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was

possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government."

16. It was further observed in paragraph 13 of the reports as under:-

"13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the

Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

17. In the case of Maniben Devraj Shah (supra), the Hon'ble Apex Court held as under:-

"18. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the

plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

18. The ratio culled out from above quoted decisions appears to be that in cases involving the State and its agencies while keeping in view that time is consumed in process of decision making, but no premium is to be given to lethargic approach or negligence on the part of officers of the State or its instrumentalities and the applications are not to be allowed as a matter of course in name of injury to public interest. The alleged sufficient cause shown for condoning the delay should not be lacking in bonafides or tainted with concoction or negligence. Legal right which stands accrued to a litigant as against his adversary by lapse of time should not be disturbed lightly on vague and irrelevant considerations. Delay which is unintentional and is result of the circumstances beyond the control of the litigant is liable to be condoned. But, in a case where a litigant simply moves at his leisure and approaches the Court with an inordinate delay and the facts do not demonstrate that he was vigilant about his rights and the delay which has occurred was on account of circumstances beyond his control, he would not be entitled for condonation of delay.

19. The facts of the case extracted by us in the preceding part of this judgement go to show that there has been delay at every stage. Except for mentioning dates of opinion expressed and communication issued by various officials and authorities of State Government and dates of receipt of the same, there is no explanation what occasioned the delay in movement of file from one official/authority to another. Though it is stated that delay has occasioned on account of procedure involved which were unavoidable, but the fact remains that

were acting leisurely and failed to act with any diligence. In the total absence of any plausible and acceptable explanation the inordinate delay of more than one year in filing the appeal, in our opinion, is not liable to be condoned mechanically merely because State Government is an appellant before us.

20. The law of limitation undoubtedly binds everybody including the government. Salmond in his jurisprudence states that the laws come to assistance of the vigilant and not of the sleepy. The Court helps those who are vigilant and do not slumber over their rights.

21. In view of the aforesaid facts and circumstances and the law discussed hereinabove, we are of the considered opinion that delay is not liable to be condoned and accordingly application under Section 5 of the Limitation Act stands dismissed.

22. As a consequence, the appeal stands dismissed as barred by limitation.

23. No order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

25.07.2018
Amogh

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No