

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

RSA No. 226 of 2016(O&M)

Date of decision: 5.2.2018

Banwari Lal and others

....Appellants

VERSUS

Shri Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Kotla, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 06.11.2008 passed by the Additional Civil Judge (Senior Division), Kosli and the judgment and decree dated 06.06.2012 passed by Additional District Judge, Rewari whereby suit filed by the respondents/plaintiffs was partly decreed by the trial Court and judgment passed by the trial Court gets affirmed in appeal as application filed by the appellants for condonation of delay in filing the appeal was dismissed and as such the appeal was dismissed being barred by limitation and a decree was passed.

Along with the appeal, an application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC for condonation of delay of 1154 days has been filed. It has been averred that appellants could not lead evidence in support of their case; could not avail statutory remedy at first instance before the first Appellate Court and again due to

communication gap, they could not have knowledge and notice of impugned judgment and decree dated 06.06.2012. On 26.10.2015, respondents/plaintiffs came with some police and revenue officials for taking possession of the land in dispute and proclaimed of passing of impugned judgment and decree dated 06.06.2012. It has further been averred that appellants are aged persons who are not well versed with the legal complications.

Counsel for the appellants would urge that law regarding condonation of delay is to be applied leniently and the Court cannot adopt pedantic approach to reject a meritorious claim on technical considerations. It is further submitted that as the appellants did not gain knowledge of passing of the judgment and decree by the Court in appeal till 26.10.2015, delay in filing the appeal is liable to be condoned when otherwise delay on their part is not intentional much less mala fide. According to counsel, Hon'ble the Supreme Court condoned delay of 1373 days in **Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (D) by LRs, 2015(2) Civil Court Cases 46.**

I have heard counsel for the appellants and perused the paper-book.

As has been noticed hereinbefore, suit filed by the respondents/plaintiffs was partly decreed by the trial Court vide judgment and decree dated 06.11.2008. Civil Appeal No.26 against the judgment and decree dated 06.11.2008 was filed in April 2012 after delay of approximately 3 years. The application for condonation of delay filed before the first Appellate Court was dismissed and eventually the appeal was dismissed being barred by limitation on 06.06.2012. The appellants knew it fully well that they had preferred the appeal before the first

Appellate Court after a huge delay of approximately 3 years. If despite filing the first appeal after an inordinate delay, they did not bother to know status of appeal for years together, the present is a glaring example of non-seriousness and non-diligence of the applicants-appellants. Courts cannot inquire into belated and stale claims on the ground of equity. Delay defeats equity. The Court help those who are vigilant and do not slumber over their rights. As such, it can be safely held that the appellants have miserably failed to make out a case that there are sufficient grounds for condoning delay of 1154 days in filing the appeal. As soon as the appellants fail to establish their plea of sufficient cause, nothing survives for consideration to allow indulgence of the Court for hearing the appeal on merits. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Ramlal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361.**

Counsel for the appellants has referred to judgment of Hon'ble the Supreme Court **Executive Officer, Antiyur Town Panchayat's case** (supra) wherein Hon'ble the Supreme Court in para 3 has held that after going through the records and hearing counsel on both sides, their Lordships were satisfied that delay occasioned only on account of deliberate lapses on the part of Executive Officer of the Panchayat at the relevant time. Who else were involved in the process was not quite clear. By taking into consideration judgment of the Court in **State of Nagaland Vs. Lipok Ao and others, 2005(3) SCC 752** wherein the quoted portion reads as "the Court must always take a justice-oriented approach while considering an application for condonation of delay. If the court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the court, in

view of the larger public interest, should take a lenient view in such situations, condone the delay howsoever huge may be the delay, and have the matter decided on merits.”, the judgment was set aside, delay of 1373 days in filing the second appeal was condoned and the matter was remitted to the High Court for further consideration. Counsel for the appellants has failed to draw similarity between the case at hand and that of the referred authority, to seek indulgence of this Court for condoning delay of 1154 days. In view of the above, application for condonation of delay is liable to be dismissed and ordered accordingly. As a natural corollary, the appeal is dismissed being barred by limitation.

Before parting with this order, it is pertinent to note that as the Regular Second Appeal has been preferred against an order whereby application for condonation of delay was dismissed and consequently appeal was dismissed being barred by limitation by the Additional District Judge, Rewari, it appears that the appropriate remedy for the appellants was to file a revision petition. However, counsel for the appellants was insistent that as the Court in appeal has drawn a decree, there was no alternative with the appellants except to file Regular Second Appeal. Since plea of the appellants for condonation of delay has been rejected, I do not consider it necessary to go into the question of maintainability or otherwise of the appeal.

FEBRUARY 5, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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