

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

**RSA No.3019 of 2016
Date of Decision.11.05.2018**

Haryana State Agricultural Marketing Board and another
.....Appellants

Vs

Moti RamRespondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pardeep Rajput, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.8061-C of 2016

For the reasons stated in the application, delay of 6 days in
re-filing the appeal is condoned.

Application is allowed.

C.M. No.8062-C of 2016 & RSA No.3019 of 2016

The appellant-defendant is aggrieved of the concurrent
finding of fact whereby the suit for declaration setting aside the letter
dated 14.5.2007 and for injunction has been partly decreed by the trial
Court and upheld by the lower Appellate Court. In other words, the
appellants-defendants have been restrained from taking forcible
possession of the suit property.

The appeal is accompanied by an application seeking
condonation of delay of 119 days. The reason given in the
application is that sanction of Chairman is required to be taken for
filing the appeal and as the sanction was given, the appellants
contacted the counsel and filed the appeal. It is in this process, delay
of 119 days occurred.

The application is bereft of details as to when certified copy of the order was available for filing the appeal. No doubt, earlier as per law, there were different parameters for condoning the delay qua government department or its instrumentalities vis-à-vis private parties but thereafter, in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649**, the Hon'ble Supreme Court has set the principles, reproduced as under, which have to be applied equally.

“(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine

of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be

exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

The application is bereft of reasoning as to when the certified copy of the order was received, much less, the sanction accorded. The department cannot be permitted to pursue the remedy at its whims and fancies or convenience. The delay of 119 days in filing the appeal has gone un-explained.

Resultantly, the appeal is dismissed on the ground of delay itself.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No