

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

LPA No.881 of 2018
Date of decision: 09.08.2018

Somesh Chaudhary and others

... Appellants

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurugram and
others

... Respondents

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

Present: Mr. Vishal Garg, Advocate for the appellants.

ARUN PALLI, J. (Oral)

This is an intra-court appeal under clause X of the Letters Patent against an order and judgment dated 19.03.2018, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants had since been dismissed.

The facts that are required to be noticed are limited.

Respondent No.3 is M.A. LLB and is a qualified MBA. She was employed as a Human Resource Manager with M/s Global Fragrances Private Limited. And the appellants happened to be the Directors of the said company. Upon a complaint made by respondent No.3, under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the Act'), the Local Complaints Committee, Gurgaon inquired into the matter under Section 13 of the Act, and vide inquiry report dated 08.02.2017, reached a conclusion that the

complainant was sexually harassed, and the allegations against the appellants were duly proved. Accordingly, the Committee in terms of Section 15 of the Act assessed the compensation the complainant was entitled to and made its recommendations to the District Officer for further action. Being aggrieved by the recommendations/order of the Local Complaints Committee, the appellants filed an appeal under Section 18 before the appellate authority constituted under the Act. Further, for the appeal filed by the appellants was time barred it was accompanied with an application seeking condonation of delay. However, as the appellate authority found that the appeal preferred by the appellants was hopelessly barred by time and the explanation rendered seeking condonation of delay hardly constituted any sufficient cause, vide order dated 19.02.2018, dismissed the said application and consequently the appeal. That is how, as indicated above, the appellants approached this Court vide a writ petition which has since been dismissed.

We have heard learned counsel for the appellants and perused the record.

Although the only question that is materially and substantially in issue is: if the delay that had occurred in filing the appeal ought to have been condoned or the appellate authority was justified in dismissing the appeal being time barred, but a reference to certain observations recorded by the Local Complaints Committee in its report are inevitable:

“9) Respondent Somesh Chaudhary, Anil Prashar and Manu Prakash were summoned time and again from 15.07.2016 to 25.11.2016 but they did not appear for a single time before the committee. Somesh Chaudhary, appeared

on 26.10.2016 but refused to accept the copy of complaint. He did not send anybody to cooperate with the Committee for investigation alongwith his authority letter. V.P. Shukla, by saying himself to be the relative tried to misguide the Committee by asking for time and assuring the Committee about presence of respondents. Hence, the Committee decided to initiate ex-parte proceedings as per the provisions of Sub-Section 5, Section 7 of SHWW Act, 2013.”

Ex facie, the appellants were repeatedly served and summoned on different occasions by the Local Complaints Committee while the matter was being inquired into, but they did not choose to appear in the proceedings. Accordingly, they were proceeded against ex parte. Concededly, in terms of Section 18 of the Act, an appeal against the order/recommendations of the Local Complaints Committee could be filed within a period of 90 days, whereas the appeal filed by the appellants was barred by 285 days. The explanation rendered by the appellants in the application seeking condonation of delay reads thus:

“1. That appellants have sent the present matter before the High Court lawyer but the High Court lawyer was also not aware about the appellate authority and he kept the matter with him for long period of time so therefore the present appeal was not filed by the appellants.

2. However, after the verification it came to the knowledge that the appellate authority against the order of local complaint committee was constituted after four

months from the pronouncement of the impugned order under appeal.

3. That since appellants were not aware about the appropriate jurisdiction to file the present appeal, the present appeal has been filed belatedly before the appellate authority.

4. That lately appellants have received the notice of execution also from the office of Deputy Commissioner and therefore the present appeal is being filed belatedly after getting the information about the appellate authority.”

Apparently, the version of the appellants as also the reasons owing to which the delay in filing the appeal is alleged to have occurred lack bonafides. Nothing is stated in the application as to who advised the appellants that the recommendations/order made by the Local Complaints Committee could only be assailed by way of a writ petition before this Court. The name of the person, who was authorized to file a petition before this Court, has also not been revealed, for as per the case of the appellants themselves they sent the matter to a High Court lawyer to prefer such proceedings. Significantly, the name of the lawyer who was engaged and alleged to have kept the matter for a long time, but still did not initiate any proceedings, remained a mystery. Not just that, as to when did the appellants realize that the recommendations of the Committee could be assailed by way of appeal has not been clarified either. In fact, institution of the appeal after over a year of the order/recommendations dated 08.02.2017 of the Local Complaints Committee was an afterthought, for, the appellants had since been served in the execution proceedings before the Deputy Commissioner

and thus were choice-less but to assail the recommendations by the Committee. Surprisingly, although the case set out by the appellants is that a litigant cannot be made to suffer on account of mistake of his/her lawyer but, as demonstrated above, name of the alleged lawyer who they had engaged to file a writ petition was never revealed. Even on being pointedly asked, during the hearing, learned counsel for the appellants only pleaded silence. That being so, the only and the inevitable conclusion the appellate authority as also the learned Single Judge could reach was: the application seeking condonation of delay in filing the appeal was liable to be dismissed.

Thus, in conspectus of the above, we are dissuaded to interfere with the impugned order and judgment. The appeal being devoid of merit is accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

09.08.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO