

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

RSA No.5144 of 2016(O&M)

Date of decision:17.9.2018

Ram Sarup

....Appellant

VERSUS

Geja Singh through his LRs Preet Gurinder Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Arun Jindal, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal has been preferred against the consistent findings recorded by the Courts whereby suit filed by the plaintiff/appellant for specific performance of the contract dated 01.12.2003 and for permanent injunction restraining the defendants from alienating and interfering in possession of the plaintiff/appellant over the suit property has been dismissed. Along with the appeal, an application has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 1005 days in filing the appeal.

Counsel for the applicant/appellant has submitted that delay in filing the appeal should not be allowed to stand in the way of substantial justice. It is further submitted that neither delay in filing the appeal is intentional much less mala fide nor it has resulted in creating third party interests in the *lis*, due to failure of the applicant to file the appeal within the prescribed period of limitation. Hon'ble the Supreme Court in **Esha**

Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, has culled out certain principles applicable to an application for condonation of delay wherein it has been held that there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalize injustice but are obliged to remove injustice.

I have heard counsel for the applicant-appellant, perused the paper-book particularly the averments raised in the application filed under Section 5 of the Limitation Act supported by an affidavit of Ram Sarup – applicant/appellant. A relevant extract from para 2 and 3 of the application reads thus:-

“2. That the certified copies of the judgment and decree dated 27.05.2013 passed by the Additional District Judge, SAS Nagar Mohali was applied on 03.08.2013 and the same was prepared and delivered on 05.08.2013. Thereafter, the brief of the case was misplaced. The applicant is a poor person and could not arrange the court-fee and expenses for filing the Appeal in High Court.

3. That the delay caused in filing the appeal is unintentional, bonafide, and due to the misplacement of the brief of the case. There is no willful default on the part of the Applicant. Now, the Applicant has arranged the court-fee and expenses for filing the Appeal. As such, there is a delay of 1005 days caused in filing the Appeal. On merits, the Applicant has a

good case in his favour and, as such, the delay deserves to be condoned, in the interest of justice.”

There cannot be any quarrel with the settled position in law that the Court is required to adopt a liberal and pragmatic approach while dealing with question of condonation of delay. However, Hon’ble the Apex Court in **Ramlal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361**, has held that even if sufficient cause has been shown, parties are not entitled to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the court by Section 5 of the Limitation Act. If sufficient cause is not proved, nothing further has to be done; the application for condoning delay has to be dismissed on that ground only. If sufficient cause has been shown then the Court has to enquire whether in its discretion, it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration but the scope of enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

A plain and careful reading of the aforesaid observations make it evident that before seeking indulgence of the Court in exercise of its discretionary jurisdiction under Section 5 of the Limitation Act, the applicant is obligated to allege and prove sufficient cause for condoning delay.

Reverting to the case at hand, plea of the applicant is that certified copy of the judgment and decree dated 27.05.2013 passed by

Additional District Judge, SAS Nagar Mohali was applied on 03.08.2013 and the same was delivered on 05.08.2013 and thereafter brief of the case was misplaced. A litigant who is not vigilant and diligent renders himself ineligible to seek indulgence in exercise of discretionary jurisdiction of the Court. It appears that the applicant has raised a plea in para 2 of the application as if he was seeking setting aside ex parte proceedings in a pending matter or restoration of a case dismissed for non-prosecution. As a matter of fact, there is no plea raised much less averments brought-forth constituting sufficient cause. This apart, if a plea as has been raised in the instant case is accepted for condoning delay of 1005 days, there may not be a single case where application for condonation of delay can be rejected.

In view of the above, when the facts and circumstances of the present case and conduct of the applicant is examined in the light of observations made in **Ramlal and others' case** (supra) and the principles laid down in **Esha Bhattacharjee's case** (supra), it is not a fit case wherein the applicant deserves any relief.

In view of what has been discussed hereinabove, the application for condoning delay of 1005 days in filing the appeal is dismissed. As a natural corollary, the appeal fails and is accordingly dismissed being barred by limitation. No order as to costs.

SEPTEMBER 17, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No