

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

RSA No.3757 of 2017(O&M)

Date of decision:5.7.2018

Anand Pal

....Appellant

VERSUS

Inder Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Balraj Gujjar, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 02.12.2015 passed by the Additional District Judge, Bhiwani whereby the judgment and decree dated 09.11.2012 passed by the trial Court has been reversed and suit filed by the appellant/plaintiff has been dismissed. Along with the appeal, an application has been filed under Section 5 of the Limitation Act, 1963 (in short 'the Act') read with Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 502 days in filing the appeal.

Counsel for the applicant-appellant in line with the allegations raised in the application would contend that there are sufficient grounds and justifiable reason to condone delay in filing the appeal. It is further argued that as per settled position in law, the Court is required to adopt a liberal approach while dealing with an application for condonation of delay so that meritorious claims are not thrown over-board at the threshold on technical considerations.

I have heard counsel for the applicant-appellant, perused the averments raised in the application filed under Section 5 of the Act supported by an affidavit of Anand Pal.

A relevant extract from para 2 of the application reads thus:-

“2. That the impugned judgment and decree dated 02.12.2015 were pronounced in the absence of the appellant, however, counsel for the appellant before the lower appellate court did not inform the fact of decision of the appeal to the applicant/appellant, consequently he could not know the factum of decision of the appeal, however, when he came to know regarding the said decision after filing the execution by the defendant then immediately he applied the certified copy of the impugned judgment on dated 01.07.2017 and after getting the same on 04.07.2017 rushed to the High Court at Chandigarh for filing the present appeal. The delay of 502 days has been occurred due to the above said reason and the appellant never had any malafide for the delay in filing the present appeal.”

There cannot be any quarrel with the settled proposition 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 Supreme 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 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.

A plain and careful reading of the aforesaid observations makes it evident that before seeking indulgence of the Court in exercise of its discretionary jurisdiction under Section 5 of the 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 he came to know about decision dated 02.12.2015 allowing the appeal of Inder Singh after execution was filed by the respondent/defendant. There is not even a whisper as to what were the circumstances much less beyond his control that stood in his way to make requisite inquiry in regard to appeal pending in the Court at Bhiwani. 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 constituting sufficient cause. This apart, if a plea as has been raised in the instant case is accepted for condoning delay of 502 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 are examined in the light of observations made in **Ramlal and others' case** (supra) and the principles laid down in **Esha Bhattacharjee vs. Managing Committee of**

Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, it is not
a fit case wherein the applicant deserves any relief.

For the foregoing reasons, application for condoning delay of
502 days in filing the appeal is dismissed. As a natural corollary, the
appeal is dismissed being barred by limitation. No order as to costs.

JULY 5, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

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