

In the High Court of Punjab and Haryana at Chandigarh

PARAMJIT KAUR SAINI
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**CM Nos. 990-991-C of 2018 in/and
RSA No. 385 of 2018(O&M)
Date of Decision: 13.11.2018**

Balinder and another

---Appellants

versus

Budh Ram

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. B.D.Sharma, Advocate
for the applicants-appellants**

Rekha Mittal, J.

CM No. 990-C of 2018

Prayer in this application is for condoning delay of 02 days in
refiling the appeal.

Allowed as prayed for. Delay of 02 days in refiling the appeal
stands condoned.

Disposed of accordingly.

CM No. 991-C of 2018 in/and RSA No. 385 of 2018

The present appeal directs challenge against concurrent
findings of fact recorded by the courts whereby suit for possession filed by
the respondent-plaintiff was decreed by the trial court vide judgment and
decree dated 25.5.2013 that came to be affirmed in appeal by the District
Judge, Yamuna Nagar at Jagadhri.

Along with the appeal, an application has been filed by
invoking Section 5 of the Limitation Act for condoning delay of 203 days
in filing the appeal.

Counsel for the applicants would argue that delay in filing the appeal has been sufficiently explained in view of averments raised in paras 3 to 7 of the application. It is argued that the Court is required to adopt a liberal and pragmatic 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 applicants and perused the averments made in the application, supported by an affidavit of one of the applicants namely Balinder son of Sardha Ram.

A relevant extract from paras 3 to 7 of the application, reads as follows:-

“3.That the appellants-applicants being rustic villagers, could not contact their counsel after filing the present appeal before the learned District Judge and were not aware of the decision of the appeal filed by them by the learned District Judge, Yamuna Nagar at Jagadhri.

4.That the appellants-applicants came to know of the decision of the appeal filed by them before the learned District Judge, Yamuna Nagar at Jagadhri only in the last week of May 2017 and they immediately contacted their counsel before the learned District Judge and were apprised of the decision of the appeal by the learned District Judge, Yamuna Nagar at Jagadhri.

5.That the appellants-applicants immediately applied for the certified copy of the judgment passed by learned District Judge, Yamuna Nagar at Jagadhri vide application No. 5206 dated 30.5.2017 which was prepared by the copying agency on 31.5.2017 and delivered to the appellants-applicants on 31.5.2017 itself.

6. That thereafter the registry of this Hon'ble Court was closed for summer vacations from 3.6.2017 upto 2.7.2017 and the registry of this Hon'ble Court opened only on 3.7.2017. The appellants-applicants were under the impression that the appeal could not be filed during the summer vacations.

7. That the appellants-applicants however being poor and rustic villagers also could not arrange sufficient funds for engaging the counsel. However, they could arrange sufficient funds only by 12.7.2017 and the present appeal was immediately thereafter got filed on 12.7.2017 itself.”

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 entitle 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 and the application for condonation of 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 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 the applicant is obligated to allege and prove sufficient cause for condoning delay.

Reverting to the case at hand, plea of the applicants is that they came to know about decision dated 20.9.2016 dismissing the appeal, in the

In view of the above, when the facts and circumstances of the present case and conduct of the applicants are examined in the light of judgment of this Court **RSA No. 2042 of 2012 titled “Vijay Kumar and others vs. Om Parkash and others” along with connected case decided on 9.5.2016**, it is not a fit case wherein the applicants deserve any relief.

(Rekha Mittal)
Judge

PARAMJIT Whether speaking/reasoned : Yes
Whether reportable : Yes/No