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

**Civil Revision No.2874 of 2018
Date of Decision:27.02.2019**

**Executive Officer, Municipal Committee, Phagwara
.....Petitioner**

Vs

Sukhdev Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Soni, Advocate
for the petitioner.

Mr. Mayank Mathur, Advocate
respondent No.1.

Mr. Arun Kaundal, D.A.G., Punjab
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner-Municipal Committee, Phagwara has preferred this revision petition against the order dated 22.09.2015 passed by the Addl. District Judge, Patiala, vide which the application under Section 5 of the Limitation Act was dismissed and as a consequence of that order, appeal filed by the petitioner against the judgment and decree dated 05.12.2013 passed by the Civil Judge (Jr. Divn.) Patiala was also dismissed.

[2]. Plaintiff/respondent No.1 filed a suit for declaration for correction of his date of birth in the office record. He also

claimed extended service and service benefits arising therefrom. Mandatory injunction was also prayed.

[3]. The suit was partly decreed by the trial Court vide judgment and decree dated 05.12.2013. Plaintiff was held entitled to get his date of birth corrected from 24.01.1952 to 25.12.1954 along with all consequential benefits. Defendants were also directed to make necessary correction in the record and also to pay the plaintiff consequential benefits arising out of the corrected entry of his date of birth in office record.

[4]. Against the judgment and decree of the trial Court, Executive Officer of the Municipal Committee, Phagwara i.e. defendant No.2 filed an appeal along with an application under Section 5 of the Limitation Act before the Appellate Court. There was delay of 80 days in filing the appeal. The main thrust in the grounds of application for condonation of delay in filing the appeal was that the judgment and decree of the trial Court was *ex parte* in nature. Petitioner could not come to know about passing of the judgment and decree dated 05.12.2013. Petitioner came to know about the judgment and decree on 31.03.2014 and thereafter the petitioner immediately applied for obtaining certified copy of the judgment and decree on 01.04.2014, which was prepared on 02.04.2014. On receipt of certified copy of order, resolution dated 07.04.2014 for filing the

appeal was passed. In the aforesaid process, the appeal had become time barred by 80 days. Thereafter the appeal along with the application for condonation of delay of 80 days came to be filed.

[5]. The lower Appellate Court dismissed the application under Section 5 of the Limitation Act vide the impugned order on the ground that the petitioner and its officials had knowledge about the pendency of the suit before the trial Court. Even petitioner had filed an application for setting aside the *ex parte* order which was dismissed. Date of alleged knowledge was belied.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. There was delay of 80 days in filing the first appeal before the lower Appellate Court. The filing of application for setting aside the *ex parte* order before the trial Court is a matter of record. The said application was filed during pendency of the suit. Factum of acquiring knowledge about judgment and decree dated 05.12.2013 only on 31.03.2014 cannot be related to knowledge on account of filing of application for setting aside the *ex parte* proceedings at a particular point of time i.e. during pendency of the suit before the trial Court.

[8]. In view of observations made by the Hon'ble Apex Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399** and **State of Rajasthan and another vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805**, merit of case cannot be thrown at the verge of technicalities and the delay in filing the appeal can be condoned as the provision has to be construed liberally.

[9]. In **Lanka Venkateshwaru (Dead) by LRs vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, the Hon'ble Apex Court has even condoned the delay of 3703 days in the context of default in bringing legal representatives of concerned party on record. It was held that the delay had occasioned due to insufficiency, inaptitude and negligence of the Government Pleader.

[10]. Similarly in **Collector, Land Acquisition Anantnag vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also held that there cannot be any uniform jacket to assess *bona fide* of a party for explaining each and every hours/minutes and seconds of delay. The merit of the case has to be considered of paramount consideration and the same cannot be sacrificed at the threshold of technicalities. The delay of 80 days in filing the

appeal before the first Appellate Court is not such, which may deprive the petitioner from exercise of lawful discretion by the lower Appellate Court in condoning the delay of 80 days, particularly when no third party interest has been crept in. The delay of 80 days in filing the appeal before the lower Appellate Court can be condoned subject to payment of adequate costs by the petitioner.

[11]. For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 80 days in filing the first appeal before the lower Appellate Court. This revision petition is allowed. Impugned order dated 22.09.2015 passed by the Addl. District Judge, Patiala is set aside, however subject to payment of costs of Rs.15000/- to be paid to the plaintiff/respondent No.1. Both the parties are directed to appear before the lower Appellate Court on 11.03.2019.

[12]. Payment of costs shall be the condition precedent for granting indulgence by the lower Appellate Court in the aforesaid context.

February 27, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No