

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

**CR No.3734 of 2016(O&M)
Date of Decision: 13.02.2019**

Kanso Devi

.....Petitioner

Versus

Jang Bahadur and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Rai Singh Chauhan, Advocate
for the petitioner.

Mr. Sarju Puri, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 03.07.2015 passed by Additional District Judge, Pathankot vide which the appeal was dismissed on the ground of limitation. The application under Section 5 of the Limitation Act was dismissed and as a consequence of that, the appeal was also dismissed being time barred.

[2]. Learned counsel for the petitioner submitted that meritorious matters should not be thrown at the verge of technicalities. Petitioner is an old and disabled lady and was

acting through her power of attorney. Delay of 6 months has occurred in filing the first appeal before the Lower Appellate Court and the merits of the case may not be sacrificed at the alter of such technicality by not condoning the delay of 6 months in filing the first appeal before the Lower Appellate Court.

[3]. On the other hand, learned counsel for the respondents vehemently opposed the revision petition on the ground that even as per application under Section 5 of the Limitation Act, no sufficient cause has been pleaded for condonation of delay of about 6 months.

[4]. I have considered the arguments raised by learned counsel for the parties.

[5]. In order to see the basic dispute between the parties, it can be seen that the dispute is between the closed collaterals in the context of execution of sale deeds dated 20.12.1993, 21.11.1994 and 18.12.1995 executed by attorney of Sumitri Devi. Sumitri Devi died after about 4 years of execution of aforesaid sale deeds.

[6]. Plaintiff/petitioner filed a suit for declaration to the effect that the plaintiff is owner in possession of land to the extent of half share as shown in the heading of the plaint and the sale deeds were sought to be declared as illegal, null and void. Counter claim was set up by the defendants.

[7]. Trial Court proceeded to consider the suit as well as counter claim. While deciding issues No.1, 3 and 5, trial Court held that the plaintiff and her mother have executed sale deeds Exs.D3 to D6 through their general power of attorney, defendant No.1 in favour of defendant No.2. The said sale deeds have been held to be legal and valid. Vide the aforesaid sale deeds, land measuring 8 kanals, 13 marlas was sold by the plaintiff and her mother in favour of defendant No.2. The counter claimants have become owner in respect of 8 kanals, 13 marlas on the basis of aforesaid sale deeds. Counter claimants failed to point out as to how the sale deed of land measuring 2 kanals, 17 marlas was executed in favour of the counter claimants. On that premise, the suit was partly decreed. Plaintiff was declared to be owner in possession of suit land to the extent of half share less land measuring 8 kanals, 13 marlas which was subject matter of sale deeds Exs.D3 to D6. Counter claim was also allowed partly and the plaintiff/petitioner was restrained from dispossessing the counter claimants from the land measuring 8 kanals 13 marlas which was subject matter of sale deeds Exs.D3 to D6. Rest of the prayers of the plaintiff/petitioner as well as counter claimant were declined.

[8]. In the aforesaid background, the first appeal came to be filed belatedly i.e. after about 6 months of passing of the

judgment and decree by the trial Court. In the application under Section 5 of the Limitation Act, grounds were taken that the petitioner is an old, ailing, handicapped and feeble lady of more than 60 years of age and was not in a position to appear before the Court for filing the appeal. The delay is occasioned because of aforesaid incapacity of the appellant.

[9]. Perusal of the record would show that before the trial Court, the appellant was represented by her power of attorney namely Bakshish Singh who has stepped into witness-box as PW 1. The filing of first appeal through power of attorney was a subjective act of the petitioner. No medical evidence has come forth on record in the context of physical difficulty of the petitioner in not filing the first appeal in time. Lower Appellate Court has dismissed the application for want of sufficient reasons to file appeal with a delay of about 6 months. Physical condition of the petitioner who is more than 60 years of age depends upon many factors.

[10]. 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**, the Hon'ble Apex Court has held that the delay in filing the appeal can be condoned as meritorious matters cannot be thrown at

the verge of technicalities. The merits of the case cannot be sacrificed at the alter of delay only. In **Lanka Venkateshwaru (Dead) by LRs Vs. State of Andra Pradesh and others, (2011) 4 Supreme Court Cases 363**, the Hon'ble Apex Court 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 has occasioned due to insufficiency, inaptitude and negligence of Government Pleader. In **Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also observed that there cannot be any uniform jacket to assess *bona fide* of the person in explaining each and every hours, minutes and seconds of delay. The merits of the case cannot be sacrificed at the threshold of technicalities. The delay is not such which will deprive the petitioner from exercising discretion in his favour by way of condoning the delay by the Lower Appellate Court.

[11]. The *lis* is between the petitioner and the respondents. No third party right has been created so far. The delay can be condoned subject to payment of adequate costs in terms of Section 35-B CPC. The latch on the part of the petitioner can be adequately answered by way of imposition of costs.

[12]. In view of above, I deem it appropriate to condone the delay of 6 months in filing the first appeal before the Lower

Appellate Court. This revision petition is accordingly allowed. Impugned order dated 03.07.2015 passed by Additional District Judge, Pathankot is set aside subject to payment of costs of Rs.25,000/- to be paid to the respondents in equal proportions before the Lower Appellate Court. In the event of doing so, the Lower Appellate Court shall take up the appeal on its Board and proceed to decide the same on merits.

[13]. Payment of costs shall the condition precedent for granting indulgence by the Lower Appellate Court in the aforesaid context.

13.02.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No