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

CR-4197-2015 (O&M)

Date of decision : 09.01.2019

HUDA and another

... Petitioners

Versus

Tarun Gulati

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Singla, Advocate and
Mr. Aakash Singla, Advocate
for the applicants/petitioners.

Mr. Ashwani Talwar, Advocate
for the non-applicant/respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the judgment dated 03.06.2011, whereby the appeal filed by HUDA/petitioners has been dismissed on the ground of delay of 540 days in filing the appeal. The present petition is also accompanied by an application seeking condonation of delay of 1323 days on the premise that against the judgment dated 03.06.2011, Regular Second Appeal No.5011 of 2011 was preferred, which was dismissed as withdrawn on 20.12.2011 and thereafter, Civil Revision No.2303 of 2012 under Article 227 of the Constitution of India was filed on 17.04.2012, which was dismissed on 16.09.2014. Thereafter, the present revision petition under Section 115 of the Code of Civil Procedure was filed on 10.04.2015 i.e. after seven months of the order dated 16.09.2014. In this

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process, a delay of 1323 days has occurred.

As regards the delay in filing the appeal, it has been explained that the judgment and decree dated 09.04.2008 was received in the office on 25.04.2008 and the opinion was given to file the appeal on 30.04.2008. The Administrator agreed on 01.05.2008 and one Kapil Sharma, Advocate, was nominated to file the appeal vide order dated 02.05.2008, but the appeal was filed on 06.11.2009 and disciplinary action has been taken against the person, who was not diligent in pursuing the matter for not filing the appeal within the period of limitation. On merits, Mr. Singla, submitted that point involved has some force, for, the suit was for declaration challenging the cancellation of the lease deed, but the trial Court exceeded its jurisdiction in issuing a direction to HUDA to allot the booth. In such circumstances, the decree is not sustainable. No harm and prejudice would be caused as there are arguable points and in case the appeal is heard on merits, it has likelihood to succeed. The parties can be compensated in terms of money, subject to the any term and condition, which this Court may deem fit.

On the contrary, learned counsel for the non-applicant/respondent-decree holder submitted that explanation, as noticed above, expresses lackadaisical and tardy approach on behalf of the HUDA and despite pendency of the application and in the absence of any stay, decree of 09.04.2008 still remains unexecutable. No notice has been issued in the main case. In support of his contentions, reliance has been laid to the ratio decidendi culled out by Hon'ble the Supreme Court in **“P.K. Ramachandran V/s State of Kerala” 1997 (4) RCR (Civil) 212** and **“Office of the Chief Post Master General and others V/s Living Media India Ltd.**

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and another” 2012 AIR SC 1506.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merits in the submissions of Mr. Singla, for, the explanation given in the application seeking condonation of delay of 1323 in filing the present revision petition is bereft of the expression 'reasonable cause' as the first revision petition was filed after expiry of four months of the withdrawal of the regular second appeal and second one, after seven months from the order dated 16.03.2014. As regards the delay in filing of the appeal, explanation given is also not in tandem with the parameters laid down for condonation of delay. The outcome of the disciplinary action against the delinquent employee still remains a mystery. Once the opinion was taken within a period of one month, no explanation has come forth as to why the appeal had been filed in November 2009 i.e. almost after 18 months. The authorities cannot be permitted to deal with the matter as per their own convenience and will and have to alive to the rigors of the Limitation Act and other prevailing laws. The explanation given, in my view, is not *bona fide*, much less, not acceptable.

It is a settled that law regarding condonation of delay is an exception and should not be used as an anticipated benefit for the Government Department. For the sake of brevity, para 13 of the judgment rendered in “**Office of the Chief Post Master General's case** (supra), reads as under:-

"13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for

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the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."

The reasoning assigned by the lower Appellate Court, dismissing the application, cannot be faulted with, much less, no ground is made out for interference. The revision petition is dismissed on merits as well as on ground of delay.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No