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

**Civil Revision No.6588 of 2014
Date of Decision: 05.04.2019**

**M/S JALDHARA CONDUCTORS PVT LTD
.....Petitioner**

Vs

**HARYANA VIDYUT PARSARAN NIGAM LTD
....Respondent**

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

Present: Mr. Pankaj Bali, Advocate for
Mr. Deepak Sharma, Advocate
for the petitioner.

Mr. Ashish Kumar, Advocate for
Mr. Saurabh Gulia, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. This revision petition has been preferred against the order dated 18.07.2014 passed by the Addl. District Judge, Panchkula, dismissing the application under Section 5 of the Limitation Act. As a consequence of the said order, the appeal was also dismissed as time barred.

[2]. Perusal of the record would show that against the order dated 30.05.2012 passed by the Addl. Civil Judge (Sr. Divn.) Panchkula, an appeal was filed by the petitioner before the

Addl. District Judge, Panchkula along with an application under Section 5 of the Limitation Act.

[3]. Learned counsel for the petitioner submitted that delay was of 20 days in filing the appeal. An application for obtaining certified copy of the order dated 30.05.2012 was filed on 02.06.2012. The copy was prepared and ready to be delivered on 08.06.2012, but the same was obtained by the petitioner on 12.06.2012. The appeal was filed on 06.08.2012.

[4]. The limitation of 30 days for filing the appeal expired on 30.06.2012. Benefit of time consumed in obtaining certified copy of the order has to be deducted while computing the period for filing appeal. If benefit of seven days is added to the period within which the appeal was to be filed, the same could have been filed upto 07.07.2012. The appeal was filed on 06.08.2012. Evidently, the appeal was barred by delay of 29 days. Though there is some mis-calculation while computing the period of delay in filing the appeal. In para No.5 of the impugned order also the stand taken by the respondent was also not correct viz-a-viz. limitation and total days with which the appeal was barred by limitation.

[5]. 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; State of Rajasthan and another vs. Bal Kishan Mathur

(D) through LRs and others, 2013(4) CivCC 805 and

Collector, Land Acquisition Anantnag vs. Mst. Katiji, (1987)

2 SCC 107 there cannot be any straight jacket formula to assess *bona fide* of a party in explaining each and every hours/minutes/seconds of delay in filing the appeal. The merit of the case has to be of paramount consideration and the same cannot be sacrificed at the threshold of technicalities. The delay is not such which will deprive the petitioner from exercise of discretion in its favour by way of condonation of delay by the lower Appellate Court No third party interest has crept in.

[6]. For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 29 days in filing the first appeal before the lower Appellate Court. The impugned order dated 18.07.2014 passed by the Addl. District Judge, Panchkula, is set aside. This revision petition is allowed. The lower Appellate Court shall proceed to decide the appeal in accordance with law.

April 05, 2019

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No