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

**Civil Revision No.6696 of 2018 (O&M)
Date of Decision: 16.05.2019**

SUNIL SHARMA

.....Petitioner

Vs

KARUNVIR SHARMA AND ANR

....Respondents

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

Present: Ms. Neetu Parashar, Advocate
for the petitioner.

Mr. J.S. Santwal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 19.09.2018 passed by the Addl. District Judge, Panchkula vide which the application under Section 5 of the Limitation Act for condonation of delay of 5 days in filing the appeal before the Addl. District Judge was allowed.

[2]. An appeal was preferred by respondent No.1 against the order dated 22.08.2017. During pendency of the appeal, an application was filed for condonation of delay of 5 days in filing the appeal. The objection with regard to the limitation was

raised by the petitioner as regards as computation of exact days by which the appeal was barred. The grounds set up by respondent No.1 was that the order was passed on 22.08.2017. An application for obtaining certified copy of the order was filed on 28.08.2017. The certified copy was prepared on 29.08.2017 and ultimately delivered on 06.09.2017. The copy could not be collected due to inadvertence after preparation of the same on 29.08.2017 and the same was collected only on 06.09.2017. The appeal was to be filed upto 23.09.2017, whereas the same was filed on 29.09.2017. In the aforesaid circumstances, the period from 29.08.2017 to 06.09.2017 was sought to be condoned by claiming the aforesaid omission to be the result of inadvertence. The limitation was computed from 06.09.2017 instead of 29.08.2017.

[3]. Perusal of the record would show that from passing of the order dated 22.08.2017, the appeal could have been filed within 31 days i.e. upto 23.09.2017. The appeal was filed on 29.09.2017 i.e. after delay of 5 days.

[4]. Learned counsel for the petitioner vehemently submitted that after filing of the appeal, repeated objections were taken by the petitioner and the same were not adhered to by the appellant/respondent No.1. The application for condonation of delay was not filed. There was non-compliance

of mandatory provisions in terms of Order 43 Rule 3-A CPC. At the time of filing of the application along with affidavit, there was delay of more than 2½ months.

[5]. After hearing learned counsel for the parties, it can be appreciated that in case delay in filing the appeal is otherwise explained or emanates from the facts and circumstances of the case, filing of separate application under Section 5 of the Limitation Act can be exempted in the facts and circumstances of the case. As per ratio laid down in **Bhagmal and others vs. Kunwal Lal and others, (2010) 4 PLR 267** and **Rattan Chand vs. State of Punjab and others, 2007(1) HRR 116**, if the sufficient cause emanates from the record, the filing of separate application for condonation of delay can be exempted. The controversy of the present type ought to have been viewed from the realistic point of view.

[6]. In view of **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 delay in question can be condoned as the merits of the case cannot be thrown at the verge of technicality.

[7]. In **Collector, Land Acquisition Anantnag vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also

observed that if the merit of the case is pitted against technicality, merit should prevail. The delay of 5 days in filing the first appeal is not such which may deprive respondent No.1 from exercise of discretion in his favour by condoning the delay. At the most the cause espoused by respondent No.1 in the form of first appeal would be decided on merits.

[8]. The presentation of time barred appeal without being accompanied by an application under Section 5 of the Limitation Act can be at best regarded as a defective appeal liable to be returned to be refiled after removing the defect. Rule 3-A of Order 41 CPC nowhere requires that the Court should reject the appeal. The appeal is not liable to be dismissed, even if an application under Section 5 of the Limitation Act is filed at a later point of time. Rule 3-A of Order 41 CPC is not peremptory in nature, nor it forecloses an opportunity in favour of the appellant/respondent No.1 to rectify the mistake either by his own or on being pointed out by the Court. The application on the part of the appellant/respondent No.1 has to be interpreted viz-a-viz. word 'shall' appearing in the provision. It is not the intention of the legislation to interpret the rule in a harsh manner so as to give punitive inference in case of non-compliance. It is true that the law helps only those who are vigilant and not those who sleep over their rights. At the same time, a vigilant litigant is also

prone to commit mistake. Unintentional lapse on the part of a litigant should not be dealt with in a harsh manner. Delay of 5 days is not such which would disentitle respondent No.1 from seeking indulgence for condonation of delay. The indulgence granted by the lower Appellate Court cannot be said to be against tenets of justice.

[9]. For the reasons recorded hereinabove, I find no reason to interfere in the impugned order passed by the lower Appellate Court. This revision petition is accordingly dismissed.

May 16, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No