

CR No.8064 of 2015
Date of Decision:26.08.2019

CANARA BANK AND ANOTHER **...Petitioners**

Versus

BARINDER KAUR AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Puneet Jain, Advocate for
Mr. Rakesh Gupta, Advocate for the petitioners.

Mr. A.P.S.Sandhu, Advocate for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 08.09.2015 passed by the District Judge, Amritsar (for short-the Appellate Court) dismissing the petitioners' appeal filed by them against the judgment and decree dated 19.08.2014 passed by Additional Civil Judge (Senior Division) Amritsar, (for short-the Trial Court) on the ground of delay.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that the respondents filed a suit seeking therein to recover from the petitioners an amount of ₹56,56,840/- along with future interest. Such suit was decreed by the Trial Court through its judgment and decree dated 19.08.2014. Three months time was given to the petitioners to pay the decretal amount, failing which the respondents were granted liberty to recover the same as per law.

On 30.10.2014, the petitioners filed an appeal against the aforesaid judgment and decree which was dismissed by the Appellate Court on the ground of delay as the Appellate Court was of the view that the

petitioners had not satisfactorily explained the reasons for filing their appeal beyond the prescribed period of 30 days. Such order is under challenge in the present proceedings.

Learned counsel for the petitioners submits that delay in filing of the appeal occurred due to a communication gap between the petitioners and their counsel appearing for them before the Trial Court; as and when the petitioners came to know about the passing of the aforesaid judgment and decree dated 19.08.2014 they acted swiftly and managed to file their appeal on 30.10.2014 which, after excluding the days taken by the registry to prepare a certified copy of the judgment and decree, was barred by only 18 days and such delay on their part was *bona fide*.

Learned counsel for the respondents submits that no satisfactory explanation for the aforesaid delay on the part of the petitioners had been supplied by them and therefore, their appeal has rightly been rejected by the Appellate Court being time barred.

The respondents' suit seeking therein recovery of ₹56,56,840/-, along with future interest, was decreed by the Trial Court on 19.08.2014. A period of 30 days is prescribed under the Limitation Act, 1963 (for short-the Act) for filing of an appeal. However the petitioners filed their appeal against the aforesaid judgment and decree on 30.10.2014. Admittedly, in the integrum, 23 days were taken by the office in the preparation of a certified copy of the afore referred judgment and decree of the Trial Court. If these 23 days are excluded, the petitioners' appeal was delayed by only 18 days.

Neither any *mala fide* on the part of the petitioners in the delayed filing of their appeal by only 18 days were found on the record nor even

alleged by the respondents. Such delay is also not inordinate. All that the petitioners seek is a decision on their appeal on its merits.

According to the petitioners the delay of 18 days in filing of their appeal was caused on account of a communication gap between the petitioners and their counsel appearing for them before the Trial Court. This fact was also acknowledged by AW2-Sanjeev Kumar, Advocate who was an associate and in the chambers of the petitioners' counsel engaged by them before the Trial Court.

The Hon'ble Apex Court in “**Vedabai @ Vijayanatabai Baburao Patil Vs. Shantaram Baburao Patil**”, (2001) 9 SCC 106, has held that in exercising discretion under Section 5 of the Act, the Courts should adopt a pragmatic approach and distinction must be drawn between a case where the delay is inordinate and where the delay is of a few days. In cases, where inordinate delay is condoned prejudice may be caused to the other side. In such cases, a more cautious approach should be adopted by the Courts. However, in cases where the delay is only of few days, a liberal approach should be there. The relevant portion of the judgment reads as under:

“ 5. In exercising discretion under Section 5 of the Limitation Act the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such

consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance."

Similarly, in "**S. Ganesharaju through Lrs. And another vs. Narasamma through Lrs and ors.**", (2013) 11 SCC 341, the Hon'ble Apex Court, while condoning the delay of 53 days, observed as under:-

" 11..... we are more than satisfied that delay has been explained properly and to our satisfaction. It reflects that sufficient cause was shown and proved before learned Single Judge. It is also to be noted that delay was only for 53 days, which would certainly not fall in the category of exorbitant or inordinate delay. If delay of 53 days is not condoned and the matter is not heard on merits, then it would tantamount to rendering injustice to the appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits.

15. The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless respondents are able to show malafide in not approaching the court within the period of limitation,

generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.

20. Thus, impugned order is hereby set aside and quashed. As

a necessary consequence thereof, the matter is to be remitted to the learned Single Judge so that it can now be heard on merits, in accordance with law. Meaning thereby, the delay stands hereby condoned and the arguments would be confined only to the merits of Review Petition. Since the matter is old, we request the parties to appear before the learned Single Judge tentatively on 29th May, 2012.”

In view of the above, the impugned order is set aside and the Appellate Court is directed to decide the petitioners' appeal on its merits, in accordance with law.

Since, the petitioners had filed their appeal in October, 2014, it is directed that the Appellate Court shall dispose of the same expeditiously but not later than two months after the date of receipt of a certified copy of this order.

The parties are directed to appear before the Appellate Court on 05.09.2019.

The petition is allowed in the above terms.

August 26, 2019

Jyoti-IV

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned Yes/No Whether Reportable Yes/No