

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

**CR No.7772 of 2018 (O&M)
Date of Decision: 05.03.2019.**

Naresh Singh

Petitioner

Versus

The S.D.O. (OP), Sub Division, UHBVNL, Raipur Rani, Tehsil and District Panchkula & others.

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Madan Gupta, Advocate
for the petitioner.

Mr. S.K. Mahajan, Advocate
for the respondents.

AVNEESH JHINGAN, J (Oral):

The petitioner has filed the present Civil Revision Petition being aggrieved of the order dated 12.09.2018 passed by the District Judge, Panchkula [hereinafter referred to as 'Appellate Court'] refusing to condone the delay of 73 days in filing the appeal.

The facts in brief are that the plaintiff/petitioner [hereinafter referred to as 'petitioner'] filed a suit for declaration to the effect that checking report dated 27.04.2015 and notice dated 15.05.2015 issued by the defendants/respondents [hereinafter referred to as 'respondents'] regarding Tubewell connections No.

G3-234 and G3-251 are wrong, illegal, null and void. On notice, respondents filed an application under Order VII Rule 11 of Code of Civil Procedure, 1908 [for brevity 'CPC'] seeking dismissal of the suit on the ground that Civil Court lacks jurisdiction. The said application was allowed vide order dated 18.05.2018. Aggrieved of the dismissal order, an appeal was filed which was accompanied by an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 73 days in filing the appeal. The said application was dismissed, hence the present petition.

Learned counsel for the petitioner argues that there was a delay of short period and it was not intentional. He further contends that the counsel who was dealing with the case before the Trial Court had received a certified copy but did not inform the petitioner about the dismissal of the suit. It is only on the receipt of notice from the respondents that petitioner came to know that the said suit has been dismissed, hence the delay occurred.

Learned counsel for the respondents defends the impugned order and submitted that the explanation put forth is not proper as each day's delay has not been explained.

The contentions raised by learned counsel for the petitioner deserve acceptance. The reasons of delay mentioned are that there was a communication gap between the counsel and the party. A liberal view is to be taken for condoning the delay where period of delay is short. The Supreme Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development**

Corporation and another, 2010 (5) SCC 459, held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.”

The law on this point is well settled that a liberal view is to be taken and each day's delay is not required to be explained. Moreover, substantial justice should not be made to suffer when pitted against technicalities.

Merely on the ground that there was fault of the counsel, the party should not be made to suffer.

The Supreme Court in **The Commissioner, Mysore Urban Development Authority Vs. S.S. Sarvesh, Civil Appeal No.1463 of 2019 (Arising out of SLP (C) No.23718 of 2018)** held

as under:

“22. In our view, the Courts below should have seen that the first appeal is a valuable right of the appellant and, therefore, the appellant Authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some cost on them for restoration of their appeal to compensate the respondent(plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Justice Vivian Bose has reminded to the Courts while dealing with the cases of this nature in Sangram Singh (supra) to do substantial justice to both the parties to the lis. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former.”

In view of above discussion and law settled by the Supreme Court, the impugned order dated 12.09.2018 is set aside. The delay of 73 days in filing the appeal is condoned. The matter is remitted back to the Appellate Court to decide the matter in accordance with law.

The Civil Revision Petition is disposed of.

[AVNEESH JHINGAN]
JUDGE

March 05, 2019
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |