

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1991 of 2019(O&M)
Date of Decision: 25.03.2019

Sugandhi Devi

.....Petitioner

Versus

Chanda (deceased) through LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 11.12.2018 passed by Additional District Judge, Gurugram vide which application for condonation of delay of 2 years, 4 months and 21 days in filing the first appeal was allowed.

[2]. Facts on record would show that the suit filed by the plaintiff/petitioner for declaration and permanent injunction was decreed vide judgment and decree dated 31.01.2015. Defendant No.1 set up a counter claim in the aforesaid suit and the same was dismissed.

[3]. An appeal was preferred against the decretal of the suit well within limitation before the Lower Appellate Court. The appeal arising out of dismissal of the counter claim could not be filed in time for which an application for condonation of delay of 2 years, 4 months and 21 days was filed and the same was condoned by the Lower Appellate Court. The suit and the counter claim were considered by the trial Court with reference to evidence on record. The suit was decreed and counter claim set up by defendant No.1 was dismissed. Appeal arising out of decretal of the suit is pending consideration before the Lower Appellate Court, but the appeal arising out of counter claim was not filed in time.

[4]. Lower Appellate Court in the interest of justice condoned the delay in filing the appeal against dismissal of the counter claim as both the appeals have to be decided vide common judgment and no prejudice will be caused to the plaintiff. The application was allowed subject to payment of costs of Rs.10,000/- to be paid by defendant No.1/appellant to the respondent/plaintiff.

[5]. Learned counsel for the petitioner relied upon **Hari Kishan Vs. Gian Kaur, 1996(1) HLR 695** and **H. Dohil Constructions Co. Pvt. Ltd. Vs. Nahar Exports Ltd. and another, 2015(1) SCC (Civil) 646** and contended that by

condoning the delay, prejudice has been caused to the plaintiff/petitioner. In **H. Dohil Constructions Co. Pvt. Ltd. case (supra)**, ratio of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, 2013(4) RCR (Civil) 785** was considered wherein several principles were laid down for dealing with the application for condonation of delay.

[6]. In view of aforesaid precedent(s) coupled with **State of Rajasthan and another Vs. Bal Kishan Mathur (dead) through LRs and others, 2013(4) CivCC 805**, it can be seen that delay in filing the appeal can be condoned in meritorious matters and the same cannot be thrown at the verge of technicalities. There can be several reasons for filing the connected appeal at a belated stage. It would also be a debatable issue as to whether single appeal filed against the judgment and decree of the trial Court, decreeing the suit and dismissing the counter claim is maintainable or not. Respondent No.1 cannot be attributed to deliberate causation of delay as he was not to be benefitted by filing the appeal late. No prejudice is going to be caused to the plaintiff. The principles laid down in **Esha Bhattacharjee's case (supra)** would espouse the cause of respondent No.1 in seeking condonation of delay as the connected appeal arising out of same judgment and decree of the trial Court is pending consideration before the Lower

Appellate Court.

[7]. In **Lanka Venkateshwaru (dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, the Hon'ble Apex Court has even condoned the delay of 3703 days in the context of default in bringing legal representatives of concerned party on record. It was held that the delay had occasioned due to insufficiency, inaptitude and negligence of Government Pleader.

[8]. In **Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also observed that there cannot be any uniform jacket to assess *bona fide* of a party in explaining each and every hours/minutes and seconds of delay. The merits of the case cannot be sacrificed at the threshold of technicalities. The delay will not deprive the defendant from exercise of discretion in his favour by the Court while condoning the delay. No third party interest has crept in. The delay can be condoned subject to payment of adequate costs in terms of Section 35-B CPC.

[9]. There cannot be any dispute with the precedents cited by the learned counsel for the petitioner, however, the ratio of aforesaid judgments does not apply to the present case, particularly in view of the fact that connected appeal is still pending before the Lower Appellate Court. The appeal arising

out of dismissal of counter claim has to be considered by the Lower Appellate Court along with the pending appeal arising out of decretal of the suit. In any case, in the interest of justice, the delay in filing the appeal can be condoned in view of facts and circumstances of the case.

[10]. The delay has been condoned by imposing costs of Rs.10,000/- by the Lower Appellate Court. The discretion exercised by the Lower Appellate Court cannot be faulted with. This revision petition is accordingly dismissed.

25.03.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**