

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

**CR No.2098 of 2019
Date of Decision: 30.04.2019**

JARNAIL SINGH

...PETITIONER

Versus

**PUNJAB STATE CIVIL SUPPLIES CORPORATION LIMITED AND
ANOTHER**

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

B.S.WALIA, J (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India, challenging Order dated 13.02.2019 (Annexure P-5), passed by the learned Additional District Judge, Faridkot, dismissing the application under Section 5 of the Limitation Act for condoning the delay in filing the appeal, as also application under order 33 CPC for permission to sue as an indigent person and consequently the appeal filed by the petitioner.

[2] Brief facts of the case leading to the filing of the present petition are that the petitioner filed an appeal alongwith application for condonation of delay against order dated 16.08.2007 (Annexure P-1), whereby the Court of Shri Dilbagh Singh Johal, PCS, the then Civil Judge (Senior Division), Faridkot, had decreed the suit filed by the respondents-plaintiffs.

[3] The application for condonation of delay was filed on the ground that the suit of the respondents-plaintiffs was decreed by judgment and decree dated 16.08.2007 (P-1) whereafter, the petitioner-applicant went into depression, consequently went out of station and that now after recovery from ailment, the appeal had been filed with the plea that it would be in the interest of justice that delay if any in filing the appeal be condoned. It was further mentioned that in case delay in filing the appeal was not condoned, the petitioner would suffer huge and irreparable loss, which could not be compensated. The application seeking condonation of delay in filing of the appeal was dismissed vide Order dated 13.02.2019 (Annexure P-5). Consequently, application Order under Order 33 CPC for permission to sue as an indigent person, as also the appeal filed by the petitioner was dismissed.

[4] I have heard learned counsel for the petitioner and considered the submissions made.

[5] Admittedly, the civil suit filed by the respondents-plaintiffs was decreed vide judgment and decree dated 16.08.2007 (P-1). Certified copy of the judgment and decree was applied through counsel on 17.08.2007 i.e. on the very next day of the date of decision. Certified copy was prepared on 25.08.2007 and was delivered on 29.08.2007 but the appeal was filed by the petitioner before the learned First Appellate Court along with an application for condonation of delay on 07.07.2018 i.e. after about 11 years from the date of passing of judgment and decree dated 16.08.2007 (P-1). The learned Additional District Judge, Faridkot recorded that the petitioner-applicant had failed to prove his plea with regard to having suffered from depression, by leading any medical evidence thereby had failed to explain the delay of 11

years in approaching the Court consequentially dismissed the application for condonation of delay by observing that the plea as set up by the petitioner for condonation of delay was a lame excuse and a concocted story, solely to avoid the consequences due to application having been moved by the respondents-plaintiffs/decree-holder in the execution proceedings for sending the petitioner-defendant/JD to civil prison since the petitioner-applicant/JD had been contesting the execution application since 2008 but never filed any appeal and it was only when the application was moved for sending the petitioner-JD to civil prison that the appeal was filed. It also needs noticing here that the respondents had filed a suit for recovery of Rs.26,07,100/- against the petitioner vide Civil Suit No.237 dated 14.10.2000, alleging therein that while the petitioner was posted as Public Distribution Clerk, he had misappropriated wheat stock and caused loss to the plaintiffs-respondents. The aforementioned civil suit was contested by the petitioner and ultimately was decreed by the learned Civil Judge (Senior Division), Faridkot vide judgment and decree dated 16.08.2007 and the petitioner was directed to pay Rs.26,07,100/- along with interest. The star argument of the petitioner is based on the contents of paragraph Nos.2 & 3 of the application for condonation of delay. Perusal of the same reveals that the suit filed by the respondents-plaintiffs was decreed on 16.08.2007 after which the petitioner suffered from depression and went out of station where he remained and after recovery from his ailment, he filed the present appeal. There is not even a whisper of the Doctor or the hospital from where the petitioner took treatment, nor has any documentary proof been attached along with the revision petition and even despite query, learned counsel for the petitioner has

not been able to refer to any record in support of the plea of the petitioner having remained under depression and consequently under treatment for a period of 11 years.

[6] As per Section 5 of the Limitation Act, appeal instituted after the expiry of the prescribed period may be entertained if the appellant/applicant satisfies the Court that there exists sufficient cause for not preferring the appeal or making the application within the stipulated period of time. Sufficient cause as contemplated in Section 5 of the Limitation Act, takes within its ambit, the definition of the term '*good faith*' as given in Section 2(h) of the Limitation Act, which lays down that nothing shall be deemed to have been done in good faith which is not done with due care and attention.

[7] The application of the petitioner does not specify the duration for which the petitioner remained under depression and consequently treatment, the Doctor as also the hospital from where he got the treatment, proof etc. by way of prescription slips, receipts of medicines purchased over the period of 11 years and consequently, the plea appears to be a concocted ground to seek the sympathy of the Court. However, the plea as put forth is apparently false for if the petitioner was under depression and was living outside, then the same ought to have been the position *qua* the execution application instituted in the year 2008, which the petitioner has been defending since the year 2008. It is apparent that the stand of the respondents-plaintiffs before the lower Court that the application under Section 5 was misconceived is correct in view of the petitioner contesting the execution application since the year 2008, after having applied for the certified copy of the judgment on the day next to the day of pronouncement of the judgment and decree and having got

the certified copy of the same shortly thereafter but of having filed the appeal after a lapse of 11 years only when application was moved by the decree-holder in the execution application to send the petitioner-JD to civil prison. The petitioner has miserably failed to show exercise of good faith in moving of the application for condonation of delay in filing of the appeal. The petitioner has miserably failed to establish sufficient cause for not filing the appeal within the stipulated period of time and for a period of 11 years thereafter. In the circumstances, no ground whatsoever exists warranting interference with the impugned order, dismissing the application for condonation of delay, consequently, the appeal, as also the application moved under Order 33 CPC. Accordingly, the revision petition being bereft of merit is ***dismissed in limine***.

(B.S.WALIA)
JUDGE

April 30, 2019
'Rajneesh'

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No