

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

CR No.3551 of 2019

Date of decision:29.05.2019

Puran Chand and another

... Petitioners

Vs.

Daljit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gaurav Singla, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioner/defendant-vendors are in revision petition against the impugned order dated 26.03.2019 whereby an application seeking condonation of delay of 708 days in filing the appeal, has been allowed by the Lower Appellate Court.

This case has a chequered history that respondent-plaintiff had filed three suits for specific performance of the agreement to sell which were dismissed on various grounds including limitation. Three appeals were filed accompanied by the applications seeking condonation of delay which were dismissed having barred by law of limitation and the revision petition preferred before this Court was also dismissed. Thereafter, SLP was filed before the Hon'ble Supreme Court which was disposed of with liberty to file the review petition. Accordingly, review petition was filed before this Court and vide order dated 04.09.2018 , the same was allowed giving liberty to the review applicant/plaintiff to lead evidence. After having availed the remedy

through an attorney, the delay has been condoned.

Learned counsel appearing on behalf of the petitioners submitted that conduct of respondent qua non-exercise of diligence, lackadaisical act of plaintiffs is writ large as the ground of condonation of delay is most lamest in the eyes of law, for, he was required to ascertain the pendency of the appeal from the concerned lawyer whom he had engaged, thus, entire liability cannot be fastened upon the lawyer. It is attorney who had appeared in the witness box and not the principal, therefore, could not divulge personal knowledge. The attention of this Court was also drawn to Annexures P-7 and P-8, copy of the evidence of AW1-Jaspreet Singh by way of affidavit and as well as cross-examination of AW1-Jaspreet Singh.

I am afraid aforementioned arguments are not sustainable for the simple reason that ground taken in the application for condonation of delay is that judgment and decree of the trial Court dismissing the suit is 11.02.2014 and engaged the services of lawyer Mr. Gur Rattan Pal Singh, who unfortunately died on 02.04.2014. It is in these circumstances, the delay occurred. In fact, the appeal was never filed by the aforementioned Advocate. A litigant in such circumstances should not be made to suffer on the lapse of the counsel, in view of the law laid down by the Hon'ble Supreme Court in **Rafiz and another vs. Munshi Lal and another AIR 1981 SC 1400**. The Hon'ble Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 Supreme Court Cases 649** laid down following principles for

seeking condonation of delay which are reproduced herein below:-

- “i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into*

consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

Even if the property exchanged in many hands, the party cannot be deprived to avail the statutory remedy of appeal under Section 96 of Code of Civil Procedure, for adjudication in accordance with law. The impugned order, in such circumstances, cannot be said to suffering from illegality and perversity.

No ground is made out for interference.

Resultantly, the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 29, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No