

**CM No. 17767-CII of 2016 in/and
FAO- 5233 of 2016(O&M)
Date of Decision: 27.3.2019**

Raghbir Singh

---Applicant-appellant

versus

Karnail Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. J.S.Bhinder, Advocate
for the applicant-appellant**

Rekha Mittal, J.

CM No. 17767-CII of 2016

Prayer in this application filed under Section 5 of the Limitation Act is for condoning delay of 404 days in filing the appeal.

Counsel for the applicant-appellant would argue that delay in filing the appeal is neither intentional nor mala fide. A liberal approach is required to be adopted for condoning delay so that meritorious claim is not rejected on technical considerations. It is further argued that a serious prejudice shall be caused to the applicant-appellant in case delay in filing the appeal is not condoned.

Before advertng to the submissions made by counsel for the applicant-appellant, it is appropriate to extract material averments raised in the application to constitute a sufficient ground for condoning huge delay of more than one year, reads thus:-

“That the clerk of the undersigned counsel placed the file into

some other brief and now when the appellant asked about his case then on searching the same was found and now the appellant is filing the present appeal so delay of 404 days occurred in filing the present appeal.”

The application is supported by an affidavit of Raghbir Singh and not by affidavit of counsel or his clerk. Experience shows that such averments are usually raised for getting condoned delay in refiling of appeal. The applicant till date has not paid even a single penny to the claimants as per award dated 12.2.2014.

When the case is examined in the light of judgments of Hon'ble the Supreme Court **Ramlal and others vs. Rewa Coalfields Limited AIR 1962 SC 361** and **Office of the Chief Post Master General and others vs. Living Media India Limited and another 2012 AIR (SC) 1506**, it is difficult to accept contention of the applicant that there are sufficient grounds for condoning inordinate delay of 404 days in filing the appeal. As a consequence, the application for condonation of delay is liable to be dismissed and ordered accordingly.

For the foregoing reason, the appeal fails being barred by limitation.

(Rekha Mittal)
Judge

27.3.2019

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No