

CM-11691-C-2019 in/and
RSA-4186-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-11691-C-2019 in/and
RSA-4186-2019 (O&M)

Date of decision: 24.09.2019

Smadh Baba Daulat Giri and another

..... Appellants

Versus

Jai Karan

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. SK Garg Narwana, Senior Advocate with
Mr. JS Johal, Advocate for the applicant-appellants.

RAMENDRA JAIN, J. (ORAL)

Through this application (CM-11691-C-2019), under Section 151 CPC, prayer has been made for condonation of inordinate delay of 2531 days in re-filing the instant regular second appeal.

The ground taken by applicant-appellants in the application for condonation of such an inordinate delay is that Ramesh Kumar, Clerk of their counsel, inadvertently, put the papers of this appeal in paper book of CWP-15615-2011, titled as "Richh Pal Vs. The Financial Commissioner Haryana, Chandigarh and others", decided on 05.09.2012 (Annexure A-1). In the process of weeding out of decided case files after 5 years, on checking brief of every case, the aforesaid mistake of putting papers in the rack/almirah of decided cases came to the notice of said clerk. Therefore, inordinate delay of 2531 days in refiling the instant appeal is not intentional or deliberate.

Having given thoughtful consideration to the submissions of learned counsel for the applicant-appellants, this Court finds the instant application merits dismissal for the reasons to follow:

By this time, it is well settled that each day's delay has to be explained in a mathematical manner. The above plea of applicant-appellants qua inadvertently placing of brief of this case in the rack/almirah of decided cases, is apparently incorrect, in the absence of any specific averment assigning cogent and plausible reason in the affidavit furnished by Ramesh Kumar, Clerk, along with the application.

Be that as it may, by this time it is also well settled that a litigant has to be vigilant throughout, till any legal proceeding initiated by him or against him is concluded. Thus, it was bounden duty of applicant-appellants to remain in touch with their counsel to pursue their case. No reason has been explained as to why applicant-appellants did not ever make any effort to ask their counsel about the fate of their case for such a long spell of 2531 days. Had the applicant-appellants been in regular touch with their counsel, the alleged mistake committed by aforesaid clerk would have unearthed in the year 2012, itself. From the plea of the applicant-appellants that after 5 years, during the process of weeding out decided cases, the aforesaid fact of putting record of this case in wrong almirah with a decided case came to notice of their counsel, it is apparent that the alleged inadvertent mistake came to the notice of learned counsel for the appellants in the year 2017, but still the applicant-appellants and their counsel kept on sleeping in a great slumber for around 2 years and thereafter re-filed this appeal in the year 2019.

There is no explanation as to what the appellants were doing, during this period. Their above negligence, dis-entitles them for condonation of delay.

From the above factual position, it is apparent beyond any shadow of doubt that the above plea taken by applicant-appellants for condonation of inordinate delay of 2531 days is completely false and concocted.

It is pertinent to mention here that since last 4-5 decades, every negligent litigant falsely putting entire blame on his counsel by concocting a false story, tries to get the delay condoned. It is, however, needless to mention that profession of an Advocate is job oriented one. No Advocate dares to act negligently. Thus, the story put forth by the applicant-appellants has to be termed as concocted and false from this angle too.

That apart, condonation of such an inordinate delay of 2531 days in re-filing the instant appeal would tantamount to terming the law of limitation obsolete/redundant, without any justification. The time has come to deprecate and reject such type of frivolous pleas taken in routine to abuse the process of law.

In view of discussion made above, the instant application for condonation of inordinate delay of 2531 days in re-filing as well as the main regular second appeal are dismissed.

September 24, 2019

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Whether speaking/reasoned
Whether Reportable

(RAMENDRA JAIN)
JUDGE

Yes/No
Yes/No