

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

CR No.5683 of 2019

Date of Decision : 20.12.2019

Mangat Ram (Since deceased) through his LRs
and others

....Petitioners

versus

Ram Parkash (Since deceased) through his LRs
and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Manohar Lall, Advocate and Ms. Surbhi, Advocate
for the petitioners.

Mr. B.S.Bedi, Advocate for the respondents.

B.S. Walia, J.

[1] Challenge in the Revision Petition under Article 227 of the Constitution of India is to order, Annexure P/4 dated 30.08.2019, passed by the learned Civil Judge (Junior Division), Karnal whereby the application filed by the petitioner's u/s 5 of the Limitation Act, 1963 was dismissed.

[2] Brief facts of the case are that Civil Suit No.535 of 1982 filed by the respondents-plaintiffs against the petitioner for possession by way of preemption was dismissed by the learned Civil Judge (1st Class), Karnal vide judgment and decree dated 28.07.1984. However, appeal filed by the respondents-plaintiffs against judgment and decree dated 28.07.1984 was allowed by the learned Additional District Judge, Karnal vide judgment and decree dated 03.09.1984 and suit for possession by way of preemption was decreed, subject to payment of Rs.47,751.50 i.e. Rs.42,000/- as sale consideration, Rs.5,050/- as costs of stamps, Rs.5,00/- as registration charges and Rs.1.50 less 1/5th money already deposited if any as costs of the copy on or

before 27.09.1987 for payment to the vendees/defendant Nos.2 to 6, failing which the suit would stand dismissed with costs.

[3] RSA No.3180 of 1987 filed by the petitioner was dismissed by the High Court vide order dated 21.08.2013. In the meantime, objections were filed in the execution application that 1/5th amount/*zare panjam*, which was mandatory to remain deposited till the final decision of the case was withdrawn by the respondents/decreed holders on 04.01.1989. However, objections filed by the petitioners were dismissed by the learned Civil Judge (Junior Division), Karnal vide order dated 21.08.2017.

[4] The petitioners challenged order dated 21.08.2017 by way of Civil Revision No.1913 of 2018 on 19.03.2018 contending that the decretal amount i.e. Preemption amount / sale consideration, which was ordered by the First Appellate Court to be deposited on or before 27.09.1987 was never deposited, therefore, the suit of the plaintiffs-respondents automatically stood dismissed under Order 20 Rule 14(1) (B) CPC.

[5] On 26.03.2018, while issuing notice of motion for 28.08.2018, proceedings before the executing court were stayed. However, on 11.07.2019 in view of the plea raised before this court leading to issuance of notice of motion not having been raised before the learned Civil Judge (Junior Division), Karnal Court, counsel for the petitioners on instructions of the petitioners, withdrew the revision petition with liberty to avail remedy available as per law.

[6] That after withdrawing the revision petition, the petitioners filed review application before the learned Civil Judge (Junior Division), Karnal along with an application for condoning 613 days delay in filing review application against order dated 21.08.2017, whereby the objections filed by the

execution application No.22 of 2015. Application for condonation of delay was opposed by filing reply, Annexure P/3. The learned Civil Judge (Junior Division), Karnal vide order, Annexure P/4 dated 30.08.2019 dismissed the application for condonation of delay, consequently the review application with costs of Rs.10,000/-.

[7] Sole argument of learned counsel for the petitioners is that since the impugned order was passed by ignoring the merits of the case, therefore, the same was unsustainable, consequentially, liable to be set aside and a direction issued to the learned Civil Judge (Junior Division), Karnal to decide the application afresh on merits. Thus, the point in issue is whether while adjudicating sufficient cause on an application u/s 5 of the Limitation Act, merits of the case can be gone into.

[8] Learned counsel has relied upon the decision of Hon'ble the Supreme Court in Civil Appeal No.10581 of 2013 in case titled as Manoharan vs Sivarajan and others to contend that refusing to condone delay can result in a meritorious matter being thrown out at the threshold and cause of justice defeated whereas when delay is condoned, the maximum that can happen is that a case is decided on merits after hearing the parties.

[9] *Per contra*, learned counsel for the respondents contended that it is settled law that while deciding an application for condonation of delay, merits of the case cannot be gone into and the only question which can be gone into is whether sufficient cause is made out for condoning delay.

[10] I have considered the submissions of learned counsel for the parties.

[11] Admittedly, objections filed by the petitioners were dismissed by

whereas the said order was challenged by way of Civil Revision Petition No.1913 of 2018 on 19.03.2018 allegedly after seeking information from the Treasury Officer, Karnal, and learning that the decretal amount had not been deposited by the decree holder as directed by the First Appellate Court, therefore, the revision petition was filed hoping that the High Court would take cognizance of the aforementioned facts and decide the case.

[12] However, since the ground raised in the revision petition leading to issuance of notice of motion vide order dated 26.03.2018 was not raised before the executing court, learned counsel, on 11.07.2019, on instructions from the petitioners withdrew the civil revision petition with liberty to avail remedy as available as per law. Plea is that in the circumstances, delay in filing the review was not intentional, as the JDs were pursuing remedy of revision against order dated 21.08.2017 and major portion of the period i.e. 437 days was spent in the revision petition before the High Court.

[13] The learned Civil Judge (Junior Division), Karnal held that if delay in filing the review application was calculated from 21.08.2017 to 16.08.2019, the same worked out to 725 days, whereas at different places in the application, condonation of delay sought was mentioned as 613 / 615 days without explaining how condonation of 613 / 615 days was sought for as admittedly review was filed on 16.08.2019 i.e. after delay of 725 against order dated 21.08.2017 dismissing the objections.

[14] Learned Civil Judge (Junior Division), Karnal by relying upon the decision in '**Mathu Ram versus Union of India**', AIR 1967 Delhi 8, **Ram Lal etc versus Riva Cold Fields Co.** AIR 1962 SC 361 observed that Hon'ble, the High Court and Hon'ble the Supreme Court had held that cause of

could not be deemed to be a sufficient cause and the test as to whether or not a cause was sufficient was to see whether it was a *bona fide* cause inasmuch as nothing could be considered to be bonafide which was not done with due care and attention. Learned Civil Judge (Junior Division), Karnal further held that while pendency of an application for revision or appeal in a wrong court may constitute sufficient cause for excusing the delay but the petitioners had filed the civil revision petition after expiry of limitation period for filing review and there was no order of the High Court condoning delay to enable the petitioners to avail of remedy of filing review and the only liberty granted was to avail of remedy in accordance with law.

[15] Learned Civil Judge (Junior Division), Karnal observed that along with application for condonation of delay, the petitioners/JDs had filed objections again on the ground that after obtaining information from Treasury Officer, Karnal, they had learnt that the decree holders had not deposited any amount of *Zare Panjam*, in compliance of order dated 29.06.2015 passed by the Punjab and Haryana High Court in RSA No.3179 of 1987, whereas on perusal of order dated 21.08.2013 passed by the High Court the decree holder had been directed to deposit the amount within a period of 02 months from the date of judgment along with interest @ 9% per annum from 20.05.1988 till date of payment and that on deposit of the amount they would be entitled to execute the decree of the trial Court in Civil Suit No.164 of 1982 and First Appellate Court in Civil Suit No.535 of 1982 on the same terms and conditions as mentioned in the decree-sheet and that vide order dated 29.06.2015, the High Court had extended time till 13.07.2015 to deposit the amount with interest as was withdrawn by respondent No.3 as per directions in judgment

13.07.2015 and that from the aforementioned it was clear that the decree holder deposited amount of Rs.1,64,505/- and Rs.1,83,883/- under order dated 29.06.2015 passed by the High Court as evident from order dated 09.07.2015 besides, copy of challan vide which the decree holder had deposited Rs.1,83,883/- on 13.07.2015 under the Head of Civil Court deposits was also attached with the case file and when challan to deposit *Zare Panjam* under the orders of the High Court was already attached, no ground was made out for the JD to file review on the ground that the decree holder had failed to deposit the amount as per judgment of the High Court dated 21.08.2013.

[16] Admittedly, points raised in Civil Revision No.1913 of 2018 had not been raised before the learned Civil Judge (Junior Division), Karnal in the objections filed leading to order dated 21.08.2017 which was challenged in Civil Revision No.1913 of 2018, as is evident from the application filed under Section 5 of the Limitation Act before the learned Civil Judge (Junior Division), Karnal, in which, it is mentioned that Civil Revision No.1913 of 2018 was filed on 19.03.2018 after seeking information from the Treasury Officer, Karnal, about the deposit of decretal amount by the decree-holder. Relevant extract of the application is reproduced as under:-

“That before filing the Civil Revision in the Hon’ble High Court, the applicants were not aware that the decretal amount was not deposited by the decree holders as directed by the first Appellate Court and, therefore, they had no occasion to file the Review Application. The fact of non-deposit of decretal amount on or before 27.09.1987 came to the notice of the JDs only before filing of the revision petition in the High Court hoping that the Hon’ble High Court may take into consideration the above said facts and decide the case accordingly.”

[17] Thus, it is clear that on dismissal of the objections vide order dated 21.08.2017, the petitioners filed Civil Revision No.1913 of 2018 only on 19.03.2018 and at the time of filing of civil revision were having knowledge about the alleged non deposit of decretal amount on or before 27.09.1987. However, without raising the aforementioned point by way of an appropriate application before the learned Civil Judge (Junior Division), Karnal, who had dismissed the objections filed by the petitioners vide order dated 21.08.2017, the petitioners straightway invoked the jurisdiction of the High Court whereas on coming to know of the alleged non deposit of *Zare Panjam* before filing of the revision petition on 19.03.2018, the petitioners ought to have availed remedy available to them as per law. However, despite knowledge of alleged non deposit after the dismissal of the objections and before the filing of the revision petition, the petitioners did not deem it appropriate to file review application before the learned Civil Judge (Junior Division), Karnal, but chose to file a civil revision petition before the High Court. Hon'ble the Supreme Court in “*Pundlik Jalam Patil* versus *Exe. Eng. Jalgaon Medium Project and another*” dealt with the manner in which the High Court is supposed to exercise its jurisdiction while hearing a challenge to an order of the Lower Courts on an application for condonation of delay. Relevant extract of the same is reproduced as under:-

“12. Whether the High Court properly exercised its discretion?”

The High Court in its order having noticed the relevant fact in categorical terms held that there was no substance in the plea that it was unaware about the judgment and award passed by the Reference Court since it was a party before the Reference Court and contested the matter. The High Court also found that the

decision of the Joint Secretary to acquiesce was communicated to the beneficiary of the acquisition and therefore, its plea about the unawareness of the award and decision taken by the Government cannot be accepted. The High Court in its order emphatically rejected the ground raised by the respondent in that regard. In such view of the matter can it be said that the High Court properly exercised its jurisdiction? It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

Since review application was not filed before filing Civil Revision No.1913 of 2018 on 19.03.2018 against order dated 21.08.2017 despite knowledge of facts prior to the filing of revision petition on the basis of which review was filed subsequently, sufficient cause for not filing the review application within time is not made out.

[18] Hon'ble the Supreme Court in 'Pundlik Jalam Patil's case (supra) referred to its earlier decision in 'Ajit Singh Thakur Singh and anr. vs. State of

Gujarat, [(1981) 1 SCC 495 . Relevant extract of the same is reproduced as under:-

15. In Ajit Singh Thakur Singh and anr. vs. State of Gujarat [(1981) 1 SCC 495] this court observed :

"It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute sufficient cause."

[19] Apart from the above, perusal of paragraph No.16 of the decision in decision in '**Manoharan's case (supra)**' makes it clear that the merits of the case cannot be gone into while deciding an application for condonation of delay. Relevant extract of the same is reproduced as under :-

16. The learned senior counsel Mr. K.P. Kylasantha Pillay, appearing on behalf of the respondents alleged that the appeal of the appellant before this court is based on wrong and frivolous grounds. The material produced by them in support of their contention is totally based on the merit of the case. Since, we are not deciding the merit of the case, the material produced by the respondents in support of their contention becomes irrelevant. We have condoned the delay in paying the court fee by the appellant while answering point nos. 1 and 2. We see no reason in rejecting the application filed by the appellant for condonation of delay in filing the appeal before the High Court as well.

[20] Likewise, Hon'ble the Supreme Court in '**Commissioner Nagar Parishad, Bhilwara versus Labour Court, Bhilwara and another**', 2009(3)

High Court ought not to go into the merits of the case and should only see whether sufficient cause had been made out by the party for condoning the delay in filing the appeal before it. Operative part of the decision in '**Commissioner Nagar Parishad, Bhilwara's** case (supra) is reproduced as under:-

3. Heard learned counsel for the parties. After going through the impugned order as well as the application for condonation of delay in filing the appeal before the High Court, we are of the view that the facts and circumstances of the present case stated in the application for condonation of delay in filing the appeal did constitute the sufficient case for condoning the delay in filing the appeal.

4. It is not in dispute that there was a delay of 178 days in filing the appeal against the order of the learned Single Judge dated 12-3-2004. While rejecting the application for condonation of delay, the High Court had considered the merits of the appeal and then rejected the application for condonation of delay.

5. While deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under [Section 5 of the Limitation Act](#) before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order.

[21] In '**Magha Singh** versus **State of Punjab and others**', 1968 PLJ

“2. The petitioner Magha Singh and Phuman Singh etc. had mutually agreed to an exchange of land in 1939. The parcel of land which the petitioner was to part with has been mentioned in Mutation No.983 while the area of 8 Bighas and 16 Biswas which Magha Singh was to receive from the other party is mentioned in Mutation No.984 of 17th September, 1939. It so happened that Magha Singh remained in possession of both the areas which he had to receive under the exchange as also the area which he had to part with. The consolidation proceedings terminated sometime in 1959 and it is mentioned in the impugned order itself that “proceeding under section 21(1) were done on 31st March, 1959”. The petition by Phuman Singh was presented under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act before the Additional Director on 15th June, 1961. It is not disputed that under the relevant statutory provision the petition had to be made within a period of six months. That the petition was prima facie barred by time is noticed by the Additional Director himself. As stated in the impugned order “this is a time-barred petition. It has been prayed that the petitioners were owners of land in Khasra No. The Additional Director, though he knew that the petition was barred by time chose to discuss the merits of the case and reached the conclusion that the mistake which had been perpetrated could not be allowed to be perpetuated and proceeded to rectify the error. I do not wish to be understood for a moment to say that the Additional Director did not pass the correct order on the merit of the case. As held by a Division Bench of this court in Sews Singh v. State of Punjab, Civil Writ No.1197 of 1964, decided on 4th October, 1966 (ILR 1967 (2)Punjab 89):-

“.....an order passed by a competent authority under section 42 of the Act would be set aside when knowing it to be barred by time the authority or official proceeds to its disposal on merits without first extending the period of limitation prescribed by the Rules. The competent authority

which extends the period of limitation must do so on being satisfied that 'sufficient cause' for not making the application within time exists, to say that the application under section 42 is meritorious would not constitute a finding about the sufficiency of cause within the meaning of the second proviso to clause 18 of the Rules”.

*In other words, the Additional Director was bound to give his finding whether sufficient cause existed for condoning the delay. He seems to have inferred that sufficient cause existed because the merits of the case required interference. The passage to which I have adverted has been approved by Full Bench decision of this Court in **Gurdial Singh v. State of Punjab, 1967 PLR 689, at page 695.***

3. *In this view of the matter, the impugned order has to be quashed and the Additional Director would now proceed to dispose of the application after first determining the question whether sufficient cause exists to waive the delay which has been occasioned in presentation of the application under section 42. With this observation, the order of the Additional Director would stand quashed. The Additional Director will not proceed to deal with the matter in accordance with law. There would be no order as to, costs of this petition.*

Petition allowed.”

Thus, law is well settled that while deciding an application for condonation of delay, the Court is not required to look into the merits of the case and is only required to consider sufficiency of cause to condone the delay. Limitation for filing review is 30 days. Delay beyond expiry of 30 days from date of passing of impugned order dated 21.08.2017 till filing of review was required to be explained by establishing sufficient cause because of some event or circumstance as a result of which it was not possible for the petitioner to file

dismissal of the objections and before filing of the revision petition cannot constitute sufficient cause more so when despite knowledge prior to 19.03.2018, review application was not filed, instead civil revision petition No.1913 of 2018 was filed on 19.03.2018 and on being confronted with facts urged in civil revision petition not having been raised before the learned Civil Judge (Junior Division), Karnal, the civil revision petition was withdrawn with liberty to avail remedy in accordance with law where after review petition was filed on 16.08.2019. The circumstances as put forth by the petitioners cannot be treated as constituting sufficient cause for condoning delay in filing of the review application within time. In the circumstances, the revision petition is bereft of merit and is accordingly ***dismissed***.

(B.S. Walia)
Judge

20.12.2019
'Rajneesh'

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