

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

LPA No.779 of 2016 (O&M)
Decided on : 20.02.2019

M/s Prakash Filling Station

..... Appellant

Versus

Indian Oil Corporation & ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Amit Jhanji, Advocate
for the appellant.

Mr. Ashish Kapoor, Advocate
for respondents No.1 and 2.

Mr. Udit Garg, Advocate
for respondents No.3 and 4.

Mr. Nitin Thatai, Advocate
for respondent No.5.

Manjari Nehru Kaul, J.

CM-1596-LPA-2016

This is an application for condonation of delay of 70 days in filing the appeal.

After hearing learned counsel for the parties, the delay of 70 days in filing the appeal is condoned.

CM stands disposed of.

Main case

Challenge in this Letters Patent Appeal is to the order dated 25.01.2016 passed by the learned Single Judge whereby CWP No.24606 of

2015 filed by the appellant was dismissed.

2. The appellant herein was a dealer of Indian Oil Corporation since 08.02.1978 and was running a petrol pump. On 13.06.2008, a routine marker test of three products was conducted by SGS firm at the retail outlet of the petitioner. One out of the three samples failed in the marker test, which led to the cancellation of the dealership of the appellant with effect from 19.11.2008. A statutory appeal filed by the appellant against the cancellation order dated 19.11.2018 passed by respondent No.1 before the Appellate Authority was dismissed on 24.07.2009. The appellant thereafter approached this Court after a delay of 6 years by filing CWP No.24606 of 2015 against the cancellation order dated 19.11.2008 passed by respondent No.1. Learned Single Judge vide impugned order dated 25.01.2016 dismissed the writ petition on account of delay and laches. Hence, the present appeal has been filed.

3. We have heard learned counsel for the parties.

4. The preliminary question that arises for consideration in this appeal is whether there was sufficient cause for delay of six years in filing the writ petition.

5. The Supreme Court in ***M/s Royal Orchid Hotels Ltd. and another vs. G.Jayarama Reddy and others., 2011(10) SCC 608*** considering the question whether the High Court should entertain petition filed under Article 226 of the Constitution of India after long delay reiterated the view expressed in ***Shankara Cooperative Housing Society Ltd. vs. M. Prabhakar and others, (2011) 5 SCC 607*** wherein the following principles had been laid down:

“20. In [Shankara Cooperative Housing Society Limited v. M. Prabhakar and others](#) (2011) 5 SCC 607, this Court considered the question whether the High Court should entertain petition filed under [Article 226](#) of the Constitution after long delay and laid down the following principles:

"(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under [Article 226](#) is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay."

6. It was further observed that where a litigant is not vigilant and

does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of Constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. It was also noted that no hard and fast rule can be laid down and no straight jacket formula can be evolved for deciding the question of delay/laches and each case is required to be adjudicated keeping in view the factual matrix involved therein. The relevant observations read thus:

“Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under [Article 226](#) of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under [Article 226](#) of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast rule can be laid down and no straightjacket formula can be evolved for deciding the

question of delay/laches and each case has to be decided on its own facts.”

7. Examining the facts herein, the dealership of the appellant was cancelled w.e.f. 19.11.2008. The statutory appeal of the appellant was dismissed on 24.07.2009. It was thereafter that the said orders were impugned in CWP No.24606 of 2015 after a lapse of six years. A perusal of the writ petition shows that there is no satisfactory explanation tendered by the appellant in taking six years to challenge the appellate and the original order of cancellation of dealership before this Court. Thus, in the absence of any sufficient or reasonable cause furnished by the appellant for inordinate delay of six years in approaching this Court, the same cannot be overlooked and condoned.

8. In view of the above, we do not find any ground to differ from the approach of the learned Single Judge and affirm the order dated 25.01.2016. Consequently, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

20.02.2019

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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No