

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 8549-C of 2014 in/and
RSA- 3707 of 2014(O&M)
Date of Decision:5.2.2019**

Johra Singh

---Appellant

vs.

Randhir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Chanderpal Tiwana, Advocate
for the appellant

Mr. Rakesh Gupta, Advocate
for respondents No. 1 and 2

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 23.12.2005 passed by the Additional District Judge, Kaithal whereby appeal against judgment and decree dated 16.4.2002 passed by the trial court was allowed and suit filed by the plaintiffs including the appellant for declaration and permanent injunction in respect of land, detailed in para 1 of the judgment of trial court, was ordered to be dismissed.

Along with the appeal, an application has been filed for condoning delay of 2931 days in filing the appeal.

Counsel for the applicant-appellant would argue, in line with averments raised in the application, that litigation was being pursued by his

brother Jasmer Singh who is a man of bad habits and became addict to alcohol. The applicant is serving as Rifleman in Armed Forces and remained posted at border area of Arunachal and Nagaland. He had been visiting his parental home after a long period of two or three years and his brother had been looking after the case pending before the Court at Kaithal. On 8.2.2014, applicant came to his native place in regard to last rites of his father and asked his brother about status of the case who told him that the case is still pending before the appellate court at Kaithal. The applicant did not believe his brother and met their counsel Sh. Rattan Singh, Advocate but he did not give any satisfactory reply. The Clerk of counsel applied for certified copy of last order passed in appeal and the applicant came to know that appeal filed by defendants had been accepted and thereafter the instant appeal was filed without loss of time. It is argued that the court needs to adopt a liberal and pragmatic approach while deciding the question of condonation of delay so that meritorious claims are not thrown over-board at the threshold on technical considerations. It is further argued that delay in filing the appeal is not intentional but due to circumstances beyond control of the applicant, as explained in the application, therefore, the applicant deserves indulgence of the court in exercise of its discretionary jurisdiction. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **N. Balakrishnan vs. M.Krishnamurthy 1999 (2) RCR (Civil) 578** wherein it has been held that in every case of delay, there can be some lapse on part of the litigant concerned but that alone is not enough to turn down his plea and to shut the door against him.

Counsel representing the respondents-defendants, on the

contrary, has seriously contested application for condoning huge and inordinate delay of more than 8 years. It is argued that allegations in the application that Jasmer Singh, co-plaintiff of the applicant is addicted to alcohol gets falsified and demolished from his plea that Jasmer Singh had been pursuing litigation on behalf of both the plaintiffs. It is further argued that nothing has been mentioned in the application as to since when Jasmer Singh had become addict to alcohol. According to counsel, plea raised by the applicant is nothing but abuse and misuse of process of law when otherwise Jasmer Singh has not been intentionally joined as an appellant in order to seek condonation of delay of more than 8 years. The last submission made by counsel is that there is nothing on record suggestive of the fact as to what efforts were made by the applicant to know about status of appeal since the year 2005 till 2014.

I have heard counsel for the parties, perused the paper book particularly the averments made in the application.

Counsel for the applicant, in response to a query, would inform that the applicant who filed the suit as a minor through his brother Jasmer Singh, was born on 2.7.1980 and attained the age of majority in the year 1998. The suit was decreed by the trial court in April 2002 and appeal was preferred by Randhir Singh, one of the defendants in April 2002 itself that came to be decided by the Appellate Court on 23.12.2005. At the time of filing of appeal in 2002, the applicant has been described to be minor on the basis of memo of parties in the original suit filed in the year 1995. There is nothing on record suggestive of the fact that the applicant ever bothered to file an application before the Appellate Court permitting him to contest the

appeal in his independent right having attained the age of majority. The applicant is stated to have been visiting his native place every 2 or 3 years but there is nothing mentioned in the application as to what effort was made by him to know status of the pending appeal. As per the settled position in law, a litigant who is not vigilant and diligent renders himself ineligible to seek indulgence in exercise of discretionary jurisdiction of the court. If plea of the applicant for condonation of delay is accepted on such vague allegations, there may not be a case where the court would decline application for condonation of delay irrespective of length of delay in approaching the court.

Hon'ble the Supreme Court in **Office of the Chief Post Master General and others vs. Living Media India Limited and another 2012 AIR (SC) 1506** while dealing with an application for condonation of delay on 427 days in filing Special Leave Petition to appeal, on detailed consideration of various judgments of the Apex Court on the issue, has concluded in para 13, reads thus:-

“In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters

everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Hon'ble the Apex Court in **Ramlal and others vs. Rewa Coalfields Limited AIR 1962 SC 361** has held that even if sufficient cause has been shown, parties are not entitle to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act. If sufficient cause is not proved, nothing further has to be done and the application for condonation of delay has to be dismissed on that ground only. If sufficient cause has been shown, then the court has to enquire whether in its discretion, it should condone the delay. This aspect of the matter naturally introduces the consideration of relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration.

This court is not oblivious of the fact that while dealing with question of condonation of delay, the court is require to adopt positive and non-pedantic approach but at the same time a litigant who awakes from slumber after number of years and seek adjudication of stale claims without any justifiable explanation to make out a case that there is sufficient cause for condoning delay shall not be entitle to any relief. The alleged habit of Jasmer Singh being addict to alcohol, in my considered opinion, is sought to be raised in order to take shelter under a weak umbrella. If such a vague

plea is allowed to prevail with the court, there may not be a case where the court would be able to dismiss the application for condonation of delay. In this view of the matter, the applicant has miserably failed to prove that there are sufficient grounds for condoning inordinate delay of more than 8 years. That being so, it is not a fit case wherein the applicant deserves any relief.

In view of what has been discussed hereinbefore, the application for condonation of delay of 2931 days in filing the appeal is dismissed. As natural corollary, the appeal fails and is accordingly dismissed being barred by limitation, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

5.2.2019
paramjit

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