

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

CWP-31216-2019

Date of decision: 6.12.2019

Pooja Yadav

.....Petitioner.

vs.

State of Haryana and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. G.S. Sullar, Advocate for the petitioner.

.....

Sanjay Kumar, J. (ORAL)

Grievance of the petitioner in this case is with the order dated 11.7.2019 (Annexure P-7) passed by appellate authority, viz., the Commissioner, Gurugram Division, Gurugram, the second respondent, dismissing the petitioner's appeal under Section 47-A of the Indian Stamp Act, 1899 (hereinafter, 'the Act 1899'). The dismissal was on the ground that the appeal was time barred. Thereby, the order dated 31.8.2017 passed by the third respondent, the Collector, Sub Division Rewari, Haryana, calling upon the petitioner to pay the deficiency in stamp duty to the tune of Rs. 4,69,500/- and deficiency in registration fee, amounting to Rs. 5000/-, stood confirmed.

Perusal of the appellate order under challenge reflects that the appellate authority was of the opinion that as 30 days time was prescribed in the statutory provision to prefer an appeal and as the petitioner filed her appeal beyond the said period, along with a petition to condone the delay of 160 days on her part in the presentation of the appeal, the appeal was liable to be dismissed on the point of limitation.

The issue of limitation in this regard stands settled by the decision of this Court in *CWP-31134-2019*, titled *Santra Devi vs. State of Haryana and ors.* In terms of the aforesaid decision, though Section 47-A(4) of the Act of 1899 prescribes 30 days time for preferring an appeal, the said provision does not prescribe an outer limit beyond which such an appeal could not be preferred. In such circumstances, Section 29(2) of the Limitation Act, 1963, would come into operation, whereby the provisions of Section 4 to 24 of the Limitation Act, 1963, would apply insofar as and to the extent that they are not expressly excluded by the Act of 1899.

That being so, it was within the power of the second respondent to condone the delay in presentation of the appeal, in the event sufficient and cogent reasons were made out therefor. However, the impugned appellate order demonstrates that the second respondent, the appellate authority, did not even consider the reasons cited by the petitioner in the condone delay petition whereby she had sought condonation of the delay of 160 days on her part in preferring the appeal. The appellate authority straightway dismissed the appeal being under the impression that once the appeal was time-barred, it was liable to be dismissed at the threshold.

The writ petition is accordingly allowed to the extent of setting aside the appellate order dated 11.7.2019 (Annexure P-7) passed by the Commissioner, Gurugram Division, Gurugram, the second respondent. The said appeal shall stand restored to the file of the second respondent for consideration of the condone delay petition filed therein

on its own merits and in accordance with law. In the event the, second respondent finds sufficient grounds to condone the delay, the appeal shall thereafter be heard expeditiously on merits and in accordance with law. The order dated 31.8.2017, which is the subject matter of the appeal in question, shall remain in abeyance till consideration of the condone delay application, in the first instance, and in the event the delay is condoned, until consideration of the stay application, if any, filed in the appeal.

No order as to costs.

(SANJAY KUMAR)
JUDGE

6.12.2019

preeti

whether speaking/non speaking

yes

whether reportable/non reportable

yes/no