

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

201

**CM-11350-C-2018 &
CM-16522-C-2018 &
CM-17181-C-2018 &
CM-11351-C-2018 &
RSA-4254-2018**

Date of decision: 20.05.2019

STATE OF HARYANA THR COLLECTOR BHIWANI AND ORS

...APPELLANTS

VS.

KANHIYA LAL

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.D.Sharma, DAG, Haryana,
for the appellants.

Mr. Veneet Soni, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

CM-16522-C-2018

C.M. is allowed subject to just exceptions. Reply along with Annexure R-1 is taken on record and filing of true typed copy of Annexure R-1 is dispensed with.

CM-11350-C-2018

Prayer in this application is for condonation of delay of 1363 days in filing the appeal against the judgment and decree dated 18.07.2014 passed by the Additional District Judge, Bhiwani.

It has been stated that the certified copy of the judgment passed by the learned Additional District Judge, Bhiwani dated 18.07.2014 in Civil Appeal No. 27 RBT of 2013/2014 titled as Kanhiya Lal vs. The State of

Haryana and others was received in the office of the Executive Engineer, PWD (B&R), Provincial Division, Bhiwani on 24.07.2014. Legal opinion was sought from the District Attorney which was forwarded to the Law Secretary-cum-Legal Remembrancer, who vide his opinion dated 20.08.2014, declared it to be not fit for filing an appeal. The department decided not to file an appeal accepting the said opinion.

An execution petition was filed by Kanhiya Lal where, in compliance with the said judgment and decree, an amount of ₹3,25,341/- was paid to the respondent-plaintiff and also intimated him to join duties on Muster Roll. Objections were filed to the execution petition, which were dismissed on 01.08.2016 by the Executing Court, against which Civil Revision No. 7008 of 2016 was preferred by the appellants on 05.10.2016 where the impugned order was stayed on 20.10.2016. However, revision petition was dismissed by this Court on 17.02.2018. Legal opinion was sought on 24.05.2018 from the office of the Advocate General on the order dated 17.02.2018 passed by the High Court where the office of the Advocate General opined on 29.06.2018 for filing a regular second appeal against the judgment and decree dated 18.07.2014 passed by the learned Additional District Judge, Bhiwani and Special Leave Petition against the order dated 17.02.2018 passed by the High Court. Sanction was sought from the competent authority by the appellants for filing the regular second appeal on 29.06.2018, to which sanction was granted on the same day by the Government of Haryana. The office of the Advocate General, Haryana, was contacted with the grounds of appeal as well as the affidavits on 06.07.2018 leading to the filing of the appeal on 11.07.2018 resulting in the delay of 1363 days in filing the appeal.

It is the contention of the learned counsel for the applicant/appellants that the delay in filing the appeal is neither deliberate nor intentional but bona-fide based upon the opinion earlier given by the District Attorney and subsequently, the learned Advocate General, Haryana. He contends that the explanation, as has been given in the application, justifies the delay in filing the appeal and, therefore, the same should be condoned. Reference has also been made by the counsel for the applicant-appellants to the order dated 13.03.2019 passed by this Court in RSA No. 2599 of 2016 titled as State of Haryana and another vs. Raghuvir Singh Saini and others, where delay of approximately 1800 days stands condoned.

On the other hand, learned counsel for the non-applicant/respondent submits that the delay, which has occurred in filing the appeal, is not only deliberate and intentional but is with an intention to deprive the respondent-plaintiff the fruits of the decree. Contradictory opinions have been given on the same judgment. The present appeal has been filed merely to deny the respondent his rightful benefits by resorting to file an appeal with an intention to come out of the order passed by the Executing Court which has attained finality. He states that the application being devoid of any justification and explanation for the condonation of delay deserves dismissal.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings.

A perusal of the application for condonation of delay on facts itself concedes that the opinion given by the District Attorney was against the filing of appeal relating to the judgment and decree passed by the learned Additional District Judge dated 18.07.2014. The said opinion has

been accepted by the department and accordingly, no appeal was preferred. In the execution application, which has been preferred by the respondent-plaintiff to execute the judgment and decree dated 18.07.2014, objections were raised, which have been rejected vide order dated 01.08.2016 by the Executing Court leading to the filing of the revision petition in the High Court i.e. C.R. No. 7008 of 2016 titled as State of Haryana through Collector Bhiwani etc. vs. Kanhiya Lal, which has been dismissed by this Court vide order dated 17.02.2018. It is after the dismissal of the revision petition that an opinion was sought from the office of the Advocate General, Haryana, which has not only given an opinion for challenging the said order through a Special Leave Petition in the Hon'ble Supreme Court but also for filing an appeal against the judgment and decree dated 18.07.2014 passed by the learned Additional District Judge, Bhiwani.

The above facts leave no manner of doubt that the present appeal has been preferred by the department with an intention to avoid the order passed by the Executing Court dated 01.08.2016 which has, admittedly, attained finality. The present appeal has, therefore, not been preferred bonafidely but with a view to delay the execution proceedings preferred by the respondent-plaintiff.

That apart, the explanation, which has been put forth by the applicant-appellants, does not display any sufficient cause nor is there any reasonable explanation for the said delay, what to say of it being justifiable and valid. There is an inordinate delay of 1363 days in filing the appeal, which goes unexplained as there are huge gaps for explanation of the delay whereas the requirement of the law is that the delay of each day has to be explained.

Hon'ble Supreme Court in the case of **Office of the Chief Post Master General and others vs. Living Media India Ltd. and another**, 2012 (3) SCC 563, has round over the delay which is occurring in filing of the appeals by the Government. In para Nos. 12 and 13, it has been observed as follows:-

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

Hon'ble Supreme Court in the latest order dated 09.05.2019 in Special Leave Petition (Civil) No. 13348 of 2019 titled as **The State of Bihar and others vs. Deo Kumar Singh and others**, has, while dealing with the Special Leave Petition which was preferred after a delay of 728 days, observed as follows:-

“ We are of the view that a clear signal has to sent to the Government Authorities that they cannot approach the Court as and when they please, on account of gross incompetence of

their officers and that too without taking any action against the concerned officers. No detail of this delay of 728 days have been given as if there is an inherent right to seek condonation of delay by State Government. The law of limitation apparently does not apply to the State Government according to its conduct.

That such condonation of delay is no more admissible on the pretext of Government working lethargy is clear from the judgment of this court in *The Chief Post Master General vs. Living Media India Ltd.* [2012(3) SCC 563].

We strongly deprecate the casual manner in which the Division Bench was approached and also this Court has been approached; the objective possibly being to get a certificate of dismissal from this Court. This is complete wastage of judicial time and the petitioners must pay for the same.”

Present is a case which is no different where the competent authorities have proceeded at a lethargic pace and a casual approach has been adopted. Although in such circumstances, costs should have been imposed but taking a lenient view, the same is not being resorted to.

The order dated 13.03.2019 passed by this Court in RSA No. 2599 of 2016 titled as State of Haryana and another vs. Raghuvir Singh Saini and others, on which reliance has been placed by the counsel for the State, the same was based upon the facts and circumstances, wherein the Court has exercised its jurisdiction to condone the delay and this Court does not find any similarity in the present case.

In view of the above, the present application for condonation of

delay of 1363 days in filing the appeal stands dismissed.

RSA-4254-2018

In view of the dismissal of the application for condonation of delay, the present appeal is dismissed as barred by limitation.

CM-17181-C-2018 &
CM-11351-C-2018

In view of the dismissal of the main appeal, these applications have been rendered infructuous and the same are disposed of as such.

May 20, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No