

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105)

CR no.6121 of 2018

Date of Decision: 23.01.2020

Jugal Kishore

...Petitioner

Versus

Ranjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S.K. Choudhary, Advocate, for the petitioner.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner challenges the order of the learned Additional District Judge, Hoshiarpur, dated 15.05.2018, dismissing the application filed by the petitioner seeking condonation of a delay of 5 years and almost 9 months in filing an appeal against the judgment and decree passed by the trial court on 04.02.2011, by which the respondent-decree holders were awarded damages of Rs.1 lac for malicious prosecution.

Obviously therefore, the appeal with which the application had been filed, also thereby stood dismissed.

A perusal of the impugned order shows that the stand taken by the petitioner (appellant before that court) was to the effect that though the defendants had engaged a counsel to file the appeal, “after 3-4 dates” the counsel had informed them that the file of the case had been lost, and the factum of the suit having been dismissed itself was disclosed by the learned counsel to the petitioner only in the year 2014 and that too only at the time when one Mohan Singh, Nambardar, had received summons from the court

and had engaged a particular counsel to represent him. Thereafter it is stated to have been found by the petitioner that in fact the said counsel engaged by Mohan Singh was in execution proceedings'.

The learned appellate court has further recorded in the impugned order that the petitioner (appellant before that court) examined only one of the petitioners as the sole witness, whose sole statement to the aforesaid effect could not be accepted, in the absence of any other evidence to show that the delay of more than 5 years was actually *bona fide*.

Learned counsel for the petitioner submits that the delay alone should not defeat a substantive right of a litigant and consequently, even though the delay was rather large, it deserves to be condoned as the petitioner is not at all liable to pay Rs.1 lac as has been awarded to the respondent-decree-holders in the suit filed by them.

To that effect he relies upon two judgments of the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**, (1999) 2 RCR (Civil) 578 and **State of Nagaland v. Lipok AO and others**, (2005)2 RCR (Cr1.) 414.

In the first judgment, a delay of 883 days was ordered to be condoned, with the Supreme Court holding that condonation of delay is a matter of discretion of the court and length of the delay is not an issue as long as the explanation for the delay is plausible.

In Lipoks' case (supra), leave to appeal against a judgment acquitting the accused had been refused by the Gauhati High Court, on the ground of a delay of 57 days in filing the application seeking such leave.

Thus, it was held after discussing the law on the subject, that once sufficient cause has been shown, the delay should have been condoned by that court.

Learned counsel for the petitioner has also relied upon a judgment of a coordinate Bench of the Delhi High Court, in **Babu Lal Yadav v. M/s R.S.Yadav**, (2010) 51 RCR (Civil) 918 to similar effect.

Having considered the matter, what is first to be noticed that the delay is not a small delay of even up to one year or 1 ½ years, wherein possibly it could be attributed to information not given accurately by the counsel for the petitioner as regards the dismissal of the suit.

The suit having been decided on 04.02.2011 by the learned Additional Civil Judge (Sr. Divn.), Hoshiarpur, the appeal along with the application seeking condonation of delay was filed on 21.10.2016 (copy Annexure P-1), i.e. it was filed after 5 years and almost 9 months.

Even if it is accepted that counsel for the petitioner had not accurately informed the status of the case to the petitioner, very obviously the petitioner himself was completely lax in even trying to determine from the court concerned for such a long period, as to the fate of the suit instituted against him.

The petitioner not having shown that he had made any effort in that regard for such a long period of time, I do not see how the judgments cited before this court are applicable, and consequently, how the order passed by the learned appellate court is erroneous.

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Consequently, finding no merit in this petition, it is dismissed
in limine.

23.01.2020
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(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No