

CM-127-CI-2021 in/and
RFA-31-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-127-CI-2021 in/and
RFA-31-2021 (O&M)
Date of decision: - 04.03.2021

Pandit Achhru Ram Sharma (deceased)

....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sushil K. Sharma, Advocate
for the applicant-appellant.

Ms. Rajni Gupta, Additional Advocate General, Haryana.
(keeping in view the advance copy given).

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-127-CI-2021

Present application has been filed seeking condonation of delay of 449 days in filing the present appeal.

Learned counsel for the respondent-State submits that though, State has not filed any reply to the said application, but submits that delay of 449 days in filing the appeal has not been explained as it should have been, hence the same may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The plea of the applicant-appellant for the condonation of delay

has to be considered in the facts and circumstances of each case. There is no straightjacket formula for accepting or rejecting an application seeking condonation of delay. The status of the parties, the reason given in the application and also the other surrounding facts, need to be appreciated while arriving at a decision whether to condone the delay or not. In the present case, the Regular First Appeal filed by the similarly situated appellants have already been allowed.

While considering the question of law on the condonation of delay, in somewhat similar circumstances, the delay in filing first appeal has been condoned by this Court while deciding CM-2617-CI-2020 in RFA No.1226 of 2020 vide order dated 07.12.2020 where the delay in filing appeal was of 1110 days. The relevant paragraph of the order passed by this Court dated 07.12.2020 is as under:-

“No doubt, the present appeals have been filed after expiry of the limitation prescribed under law. The accompanying appeals relates to the acquisition proceedings wherein, the land of the applicant-appellants has been acquired by the respondent-State. The Hon'ble Supreme Court of India has settled the point with regard to the prayer seeking condonation of delay in respect of the appeals arising out of the land acquisition matters. While deciding **Civil Appeal No.10799 of 2013, titled as Imrat Lal and others Vs. Land Acquisition Collector and others, on 29.11.2013**, the Hon'ble Supreme Court of India held that a liberal approach should be adopted while considering the application seeking condonation of delay in respect of the land acquisition matters as villagers in our country are mostly illiterate. The Court condoned the delay of 1110 days in filing the appeal before the Hon'ble Supreme Court of India. The relevant paragraph of the said judgment is as under:-

“13. We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the Courts or the advocates with whom

they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for awards of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief.

14. In Civil Appeal Nos. 5335-5336 of 2013 titled Samiyathal and others Vs. Special Tahsildar and others decided on 05.07.2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation. The relevant portion of the judgment passed in that case is extracted below:

“We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was acquired by notification dated 22.05.1191, but who may have on account of ignorance, poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution.”

The similar application seeking condonation of delay in the land acquisition matters came up for hearing before the Hon'ble Supreme Court of India again in **Civil Appeal No.6599-6601 of 2014, titled as Dhiraj Singh (D) Tr. Lrs and others Vs. Haryana State and others, decided on 21.07.2014** wherein after noticing the settled principle of law on the issue, the delay of 12 years in filing the appeal against the award was condoned and the compensation was enhanced. The relevant paragraph of the said judgment is as under:-

“7. It is the case of the appellants that due to their financial weak condition, they could not file the Letter Patent Appeals (LPAs) before the

Division Bench and on coming to know of the judgment dated 27.7.2005 rendered by the Division Bench, they also filed their appeals. However, since there was delay in preferring these appeals, the High Court has refused to condone the delay and dismissed the LPAs.

8. Against the orders passed by the High Court, the appellants have filed these proceedings.

9. No doubt, there is a long delay in filing the appeals. However, we find that it is a case of payment of compensation to these appellants who were the land owners and which land was taken away by compulsory acquisition. However, land owners whose lands were taken over by the same notification, have been able to get the compensation @ Rs.200/- per square yard whereas the compensation given to the appellants is Rs.101 per square yard for their entire land.

10. It is also not in dispute that the appellants are agriculturists. Their averments that they could not prefer the LPAs because of their financial weak condition has not been disputed by the respondents. We find that in a similar situation, this Court had condoned the delay of 3240 days in the case of **Market Committee, Hodal v. Krishan Murari and Ors., 1996 (1) R.R.R. 420: 1996 (1) SCC 311**. There are many other cases cited by the appellants condoning the delay in similar circumstances.

11. In the matter of land acquisition where land of peasants is acquired, a different approach has to be taken. These persons should not be deprived of the reasonable compensation for their lands. If other similarly situated land owners are given the compensation @ Rs.200/- square yard, there is no reason to pay the compensation to the appellants at much lesser rate. In this context, we would like to quote the following observations from the judgment **dated November 29, 2013 in the case of Imrat Lal and others v. Land Acquisition Collector and others, (2012 (2) R.C.R. (Civil) 437: Civil Appeal No.10799 of 2013)**.

“While we agree with Shri Narender Hooda that the averments contained in the application for condonation of delay were extremely vague and did not provide satisfactory explanation for the long delay of 1110 days, but it cannot be ignored that in identical matters another learned Single Judge had granted relief to the landowners by enhancing the compensation and this factor should not have been overlooked by the learned Single Judge while deciding the application for condonation of delay.

We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in this Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or the Reference Court have been granted relief. **In 2012 (2) R.C.R. (Civil) 441: Civil Appeal Nos. 5335-5336 of 2013 titled Samiyathal and others v. Special Tahsildar and others decided on 5.7.2013**, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation.

The relevant portion of the judgment passed in that case is extracted below:

“We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was acquired by notification dated 22.05.1991, but who may have on account of ignorance, poverty and other similar handicaps, not been able to approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article 142 of the Constitution.”

In view of the above discussion, the appeal is allowed, the impugned order is set aside and the delay in filing RFA No.5477/2011 by the appellants is condoned.

12. In fact, in a matter arising out of the same notification, in Civil Appeal Nos.617-619 of 2012, this Court had rendered a judgment dated 17.1.2012 condoning the delay of 4644 days and enhancing the

compensation to Rs.200/- per square yard. A perusal of the counter affidavit filed by the respondents makes it clear that rate of Rs.200/- per sq. Yard fixed in Horam's case (LPA No.920 of 1994) has been upheld by this Court by dismissing the special leave petition against the said judgment. A perusal of the said order makes it clear that it relied upon dismissal orders passed in various other special leave petitions whereby the aforesaid rate had been upheld.

13. Thus, in almost all cases, the rate of Rs.200/- per sq. Yard has been applied by the High Court and this Court.

14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and no pedantic.

16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in **Collector (LA) v. Katiji, 1987 (2) SCC 107** where it is stated in para 3 as under

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice- that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter

being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in justice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

17. The aforesaid judgment was followed by this Court in **DDA v. Bhola Nath Sharma, 2011 (1) R.C.R. (Civil) 820: 2011 (2) SCC 54**, which was also a matter concerning land acquisition.

18. We, accordingly, allow these appeals. Impugned orders of the High Court are set aside. Delay in filing the LPAs is condoned. It is held that the appellants shall be entitled to enhanced compensation @ Rs.200/- per square yard. However, for the period of delay in approaching the High Court by way of LPAs, in all these cases, no interest should be paid to them. Compensation shall be worked out accordingly and paid to the appellants within a period of three months from today."

Learned counsel appearing on behalf of the applicant-appellants states that the applicant-appellants are ready to forego interest for the period of delay, hence no prejudice will be caused to the respondents, if the delay is condoned.

Keeping in view the facts as well as law enumerated hereinbefore, the applications seeking condonation of delay are allowed subject to the condition that the applicant-appellants will not be entitled for the interest on the enhanced compensation equivalent to the period of delay, which has been condoned by the Court today."

Keeping in view the averments made in the application and the settled principle of law noticed hereinbefore, prayer for condonation of delay in the present case is squarely covered in favour of the appellant, the application is allowed and delay of 449 days in filing the present appeal is condoned.

RFA-31-2021 (O&M)

Learned counsel for the parties agree that the present Regular First Appeal is covered by the decision of this Court in **RFA No.1817 of 2019 titled as 'The Akash Cooperative Group Housing Society Ltd.-II Vs. State of Haryana & others', decided on 27.05.2020.**

Keeping in view the said aspect, the present Regular First Appeal is also disposed of in the same terms as in **RFA No.1817 of 2019 titled as 'The Akash Cooperative Group Housing Society Ltd.-II Vs. State of Haryana & others', decided on 27.05.2020.**

As the main appeal is disposed of, CM-126-CI-2021 stands infructuous.

March 04, 2021
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No