

101

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

**CM-2332-C-2021 IN/AND
RSA-410-2021 (O&M)**

Date of Decision: 03.08.2021

Sukh Ram (deceased) through his LR Ranjodh Singh)

...Appellant

Versus

Piara Lal (since deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gursharanjit Singh, Advocate
for the appellant.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Applicant/appellant herein (legal representative of the appellant below) seeks to set aside the impugned judgment and decree dated 30.11.2010 passed by learned Civil Judge (Jr. Division), Mukerian, as well as, first appellate court judgment and decree dated 17.08.2013 rendered by learned Additional District Judge, Hoshiarpur upholding the trial court judgment.

2. There is a delay of 2312 days in filing the appeal. Narrative of reasons pleaded in the accompanied condonation application under Section 5 of the Limitation Act, is as under: -

“2. That the impugned order was passed by the Ld. ADJ on 17.08.2013 and Sukh Ram had died on dated 10.11.2014. His LR. Ranjodh Singh son of Sukh Ram appellant having no knowledge of the pendency or decision of the above titled case before the Ld. Trial or Ld. Court of ADJ.

3. *That the respondents on dated 28.03.2021 threaten the appellant to dispossess the appellant and demolish the house of the appellant, they handed over the copy of first page of the judgment of the Ld. Trial Court.*

4. *That the appellant then approached courts and got certified copy of judgment and decree sheet of Ld. Lower court and the copy of judgment and decree of Ld. ADJ Hoshiarpur.*

5. *That the appellant had come to the Hon'ble High Court for verifying whether Sukh Ram father of appellant had filed any appeal or not, the appellant Ranjodh Singh got hold of one clerk who after verifying the case status of the appellant, informed him that no case has been filed till date. Now after arranging the documents the instant appeal is being filed at the earliest before this Hon'ble Court. ”*

The aforesaid explanation given in the application for condonation of delay does not inspire any confidence. Reason given therein essentially is that on 28.03.21 applicant/appellant, when threatened with dispossession/demolition, applied certified copy and upon the same being supplied, further steps were taken.

3. Perusal of the application would reveal that not only the application has been filed in a mechanical manner, but even the mandate of law, which envisages each day's delay has to be explained, is completely amiss in the averments of the application. No worthwhile explanation has been given for the same.

4. Flimsy grounds have been taken to explain the delay. The predecessor-in-interest died on 10.11.2014, whereas the impugned judgment and decree was passed on 17.08.2013 by learned Additional District Judge, Hoshiarpur. The regular second appeal had already become hopelessly time barred during the life time of the predecessor-in-interest of the applicant/appellant herein. He chose not to file RSA. Now his successor-

in-interest is bound by the inaction of the original defendant/appellant in first appeal.

5. Be that as it may, settled proposition of law being, that by virtue of limitation, vested rights with of litigant cannot be treated in such careless manner, so as to divest him of the same on as flimsy grounds as pleaded in the application herein. In this context, reliance may be had on the Apex Court judgment rendered in ***Ramlal and others Vs. Rewa Coalfields Ltd.*** reported as ***1962 AIR (SC) 361***. Relevant extract of the same is reproduced here-in-below:

“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in trial behalf should be exercised to advance substantial justice.”

6. No doubt, a discretion has been vested with court to condone the delay, provided sufficient cause thereof has been made out. I have already given my mind that reasons given in the application do not really make it out to be a sufficient cause. That apart, having perused the purported justification, I may hasten to add that very mechanical reasons have been given for the same. Almost suggestive, as if, to seek

condonation of delay is a matter of right, regardless of the reasons *qua* the same.

7. In fact, going a step further, even sufficiency of cause, per se, does not result in any indefeasible legal right. Reference once again may be had on “**Ramlal**” judgment *ibid*, based whereupon, His Lordship R.F. Nariman, J. (as he then was), speaking for Apex Court in **Government of Maharashtra (Water Resources Department) versus M/s Borse Brothers Engineers & Contractors Pvt. Ltd., 2021 SCC OnLine SC 233**, observed as below: -

*“60. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in **Ramlal v. Rewa Coalfields Ltd., (1962) 2 SCR 762** as follows:*

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is 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 all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under S. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of SS. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of S.14 cannot to the same extent and in the same manner be invoked in dealing

with applications which fall to be decided only under S. 5 without reference to S.14.”

8. As an upshot of the aforesaid, no grounds to interfere for condonation of delay are made out.

9. Additionally, in the interest of justice, I have heard the learned counsel on merits as well and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

10. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

11. Furthermore, no question of law, much less substantial, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. Dismissed, therefore, both on ground of delay and merits.

13. Pending application/s, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 03, 2021
vandana/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No