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

**LPA-1085-2021 (O&M)
DECIDED ON: 15th NOVEMBER, 2021**

HARPREET SINGH

.....APPELLANT

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

**CORAM:HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. S.L. Chander Shekhar, Advocate
for the appellant.

*****

SANDEEP MOUDGIL, J

The instant Letters Patent Appeal is directed against the impugned order dated 28th February, 2019 passed by learned Single Judge dismissing the civil writ petition wherein, writ in the nature of mandamus was sought to quash the order dated 20th January, 2017 passed by the Senior Divisional Commercial Manager, Northern Railway, Ferozepur.

There is also an application under Section 5 of the Limitation Act for condonation of delay of 386 days in filing the present appeal.

The grievance raised by the appellant-petitioner qua order dated 20th January, 2017 was against closure of units belonging to Manjit Kaur (since deceased) a vending contractor, who happens to be mother of the appellant-petitioner.

The brief facts needed for the disposal of the instant appeal are that the dispute raised before learned Single Judge primarily revolved around the licence of vending contractor, which was originally in the name of Hara Singh (since deceased), father of the appellant-petitioner. After the death of Hara Singh the said contract was transferred in the name of Manjit Kaur (since deceased), mother of the appellant-petitioner. The contract included running stalls, trolleys, trays and shops at Railway Station, Amritsar under Ferozepur Division to sell commodities like snacks, water, tea, coffee, meals, biscuits etc. The cause of action is averred to have accrued once Manjit Kaur (mother of the appellant-petitioner) also died on 9th June, 2016.

It has come on record that during his life time Hara Singh was issueless, who adopted the present appellant-petitioner (Harpreet Singh) as his son vide adoption deed dated 7th September, 1995. Appellant-petitioner is the beneficiary of the registered Will executed by his mother on 2nd September, 2011 transferring the entire rights with regard to vending contract which was earlier transferred in her name by her deceased-husband (Hara Singh) and as such, appellant-petitioner is the sole legal heir.

Appellant-petitioner built up his case for enforcing his right in lieu of aforesaid Will and made a representation to the Senior Divisional Commercial Manager, Ferozepur Division, Ferozepur (Annexure P-4) dated 19th July, 2016 requesting to transfer the vending contract in question in his name as per Commercial Circular bearing No. 52/2013, dated 19th August, 2013 (Annexure P-5), which deals with the transfer of licence to the spouse/legal heir. Para 21 of the said circular reads as under:-

> "***Modified Para 21:*** *Transfer of license to the spouse/Legal heir would be allowed only in event of death of the original licensee. The license can be transferred in the name of spouse/legal heir for the unexpired period of the agreement only, with personal approval of the Chief Commercial Manager/Divisional Railway Manager/MD, IRCTC as the case may be. Nomination to the legal heir should be obtained from*

> *the license holder at the time of entering into contract. The nomination should be only from amongst the family members. After completion of the unexpired period renewal can be considered to the legal heir for both general and reserved category minor static units licensees subject to satisfactory performance and payment of all dues, if any."*

The appellant-petitioner has also sought the transfer of licence pertaining to catering services on the basis of parity alleging that the vending contract has been transferred in other such like cases.

Learned Single Judge has dealt with the relevant provisions incorporated in the Commercial Circular bearing No.35/2010, dated 21st July, 2010 as amended on 19th August, 2013. A perusal of clause 21 of the Commercial Circular bearing No. 35/2010, dated 21st July, 2010 as amended on 19th August, 2013 makes it crystal clear that the transfer of licence to spouse/legal heir would be allowed only in the event of death of the 'original licensee' that too only pertaining to unexpired period of the agreement/licence subject to approval of the Chief Commercial Manager/Divisional Railway Manager/MD, IRCTC as the case may be.

In the present case the original licence was initially issued in the name of Sardar Hara Singh- husband of Manjit Kaur. Upon his demise the licence was transferred in the name of his spouse namely Manjit Kaur. Manjit Kaur was not the original licensee but was already a transferee and accordingly, now seeking help under Clause 21 of the aforesaid Circular and the claim thereof by the appellant-petitioner is not tenable. It is also to be noticed here that the vending contract in question was valid upto 21st January, 2017 which could in any case at best survive for the period from the date of death of Manjit Kaur i.e. 10th June, 2016 upto 21st January, 2017, as such the appellant-petitioner does not have any legal right to be enforced.

Aggrieved against the impugned order dated 28th February, 2019, the appellant-petitioner preferred the present appeal, which also suffers from inordinate delay of 386 days in filing the appeal. The only explanation put forth by the appellant-petitioner is that he was under the impression that against the impugned order dated 28th February, 2019 there is no remedy and the present appeal also could not be filed due to prevailing COVID-19 pandemic at the relevant time.

The jurisdiction vested with the Courts to consider whether any 'sufficient cause' has been shown to condone the delay is no doubt discretionary but the same must be exercised judicially and not as a matter of routine. The averments made in the application under Section 5 of the Limitation Act, 1963 (for short 'the Act') filed by the appellant-petitioner seeking condonation of delay is full of patently false and vague averments which is in fact no explanation whatsoever. It would be apposite to have a glance on the averments made in the application which are confined in para 2 of the said application and are reproduced herein below:-

> *"2. That the delay in filing of the appeal is on account of the reason that the appellant is under impression that against the impugned order passed by this Hon'ble Court there is no remedy and thereafter due to COVID-19 pandemic could not file the present appeal and when he contracted his counsel it was found that delay in filing of the instant Letter Patent Appeal is occurred on account of above mentioned bonafide reason."*

The averments made in the application are totally bald which cannot be accepted by any stretch of imagination particularly in view of the fact that the counsel for the petitioner as well as counsel appearing for the appellant in the present appeal are same. It is only an attempt by the applicant-appellant to fill up the lacunae occurred due to inordinate delay of 386 days alleging that he was under the impression that there is no remedy available against the impugned order dated 28th February, 2019. It is but obvious that once the claim of the appellant-petitioner with regard to vending contract was rejected by learned Single Judge, he might have been informed by his counsel immediately and therefore, the plea of lack of knowledge about available legal remedies is not tenable in the facts and circumstances of the present case.

It is worth noticing here that appellant herein is the beneficiary of vending contract in question. Such contracts are based on public interest as also involve public money. The explanation put forth by the appellant lacks confidence in view of the fact that the appellant-petitioner had been in correspondence with the authorities prior to the filing of the writ petition and to such factual aspect there is no dispute at all as is evident from the series of representations attached with writ petition along-with *inter-se* correspondence of the respondent officials. In fact, now an attempt has been made to set the machinery in motion by the respondents after lapse of vending contract period on 21st January, 2017. It is beyond any stretch of imagination to accept the lame excuse of the appellant that he was under impression as to there is no remedy available against the impugned order dated 28th February, 2019.

A maxim of roman law subsequently embraced by equity : *Vigilantibus Et Non Dormientibus Jura Subveniunt,* which says the law comes to the assistance of those who are vigilant and do not slumber over their rights applies here as well and the appellant is found to be non-vigilant in pursuing his remedies.

A perusal of application under Section 5 of the Act suggests neglect of his own right for long time in preferring appeal and even the parity sought by the appellant cannot be considered at this stage being a stale claim.

The Apex Court in ***Pundlik Jalam Patil (D) by LRs.Versus Exe. Eng. Jalgaon Medium Project and another, 2008 (17) SCC 448,*** has held as under:

> *“.......... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.”*

No doubt a liberal view is to be taken while dealing with the application seeking condonation of delay where the period of delay is short but a strict yardsticks needs to be applied where the delay is inordinate as has been held by the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459.***

Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be.

The Supreme Court in ***Ram Lal and others vs. Rewa Coalfields Ltd., AIR 1962 SCC 361;*** held that: "in construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. Firstly, the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. Secondly, it cannot be ignored that if sufficient cause of excusing delay is shown discretion as given to the court to condone the delay and admit the appeal. It is further necessary to emphasis that even if the 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 Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party of its *bona fides* may fall for consideration.

An unlimited and perpetual threat of limitation creates insecurity and uncertainty and therefore, some kind of limitation is essential for public order. The object of law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. *Salmond* in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest, which demands that the beneficiary or the State, as the case may be , should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law.

In the light of the afore-said discussion and the reasons and after considering the submissions made by learned counsel for the applicant/appellant it is abundantly clear that there is no plausible, tangible explanation of the inordinate delay justifying the condonation of delay in filing the present appeal, as has been observed by the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. (supra).***

From what we have discussed above, it is apparent that the application seeking condonation of delay of 386 days in filing the present appeal is not only in-correct but is *ex-facie* false and does not deserve judicial acceptance by ignoring parameters for exercise of discretion under Section 5 of the Act.

In the light of above, no ground is made out for condoning the delay in the filing the present appeal.

Accordingly, the delay is not condoned and therefore, the application is dismissed. As a result, the appeal also stands dismissed being time barred along-with all other applications, if any.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

15th NOVEMBER, 2021
Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*