

CM-482-C-2021 in
CM-4579-C-2020 in/and
RSA-1514-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-482-C-2021 in
CM-4579-C-2020 in/and
RSA-1514-2020
Date of decision: - 11.02.2021

Kishori Lal

....Appellant

Versus

Banta Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. B.S. Makar, Advocate
for the applicant-appellant .

Ms. Karunesh Kaushal, Advocate
for Mr. Deepak Kaushal, Advocate
for applicant-respondents No.1 to 7 in CM-482-C-2021.

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-482-C-2021

Present application has been filed on behalf of respondents
No.1 to 7 to place on record the reply to CM-4579-C-2020.

In view of the averments made in the application, the same is
allowed. Reply to CM-4579-C-2020 is taken on record.

CM-4579-C-2020 in
RSA-1514-2020

Present application has been filed seeking condonation of
delay of 1328 days in filing the accompanying Regular Second Appeal.

In the application, it has been mentioned that the order was passed by the learned lower Appellate Court on 07.01.2016 and the copy of order was also obtained by the applicant-appellant and thereafter, the applicant-appellant had approached a lawyer through his family friend, who kept assuring him that the appeal has been filed, but it was only in the year 2019, he came to know that no appeal has been filed by the said lawyer and therefore, the delay of 1328 days in filing the present appeal.

After notice in the present application was issued, a reply has been filed on behalf of respondents No.1 to 7 to the said application, wherein, certain facts have been brought to the notice of this Court.

In the said reply, it has been submitted that the applicant-appellant is not an illiterate person and has rather remained a Sarpanch of a village. As per the unrebutted averment in the reply, applicant-appellant also remained a Secretary in a Cooperative Society. Not only this, it has been brought to the notice of this Court that one of the sons of the applicant-appellant, namely, Parmod Kumar, is a practicing lawyer and his other son is a government employee.

The averments made in the reply have not been controverted by the applicant-appellant, rather, during the course of hearing, the same have been conceded.

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

The present application filed by the applicant-appellant seeking condonation of delay is very cleverly drafted. In paragraph No.3

of the application, it has been stated that the applicant-appellant had approached an advocate without giving the details of the said advocate. There is no averment in the application that which particular advocate was engaged by him for filing an appeal. That being so, it cannot be said that the applicant-appellant had performed his duty in filing the appeal and the appeal could not be filed due to the laxity on the part of the counsel he engaged. Once, there is no averment made in the application that the applicant-appellant had engaged any lawyer for pursuing the appeal, the benefit of the averment made in paragraph No.3 cannot be given to the applicant-appellant. Further, once there is a practicing lawyer in the family of the applicant-appellant, being his own son, the averments made in paragraph No.3 of the application cannot be accepted as the same were not only a bald averment, but prima face is far away from the truth. It is not understandable that the applicant-appellant will approach a lawyer without consulting his own son, who is a lawyer himself and the so called lawyer whom applicant-appellant met, fooled him for a period of three years by stating that the appeal has been filed. Nowadays information of filing of the appeal is on the website and applicant/appellant's son, who is a lawyer, could have easily know the status of the appeal on a click of a button. Further, there is no averment that the applicant-appellant has taken any action against the so called lawyer whom he had approached.

The condonation of delay cannot be sought as a matter of right. Once, the appeal is not preferred within a time frame, a right

accrues in the opposite party to seek the finalization of the proceedings. It is only under exceptional circumstances where applicant is able to prove before the Court that despite due diligence, appeal could not be filed and the facts and circumstances were such that same prevented the applicant-appellant in exercising the right of appeal and those facts & circumstances were beyond the control of the applicant. Only under those circumstances, the consideration to the said averments are to be given by the Courts.

The Hon'ble Supreme Court of India while deciding **Civil Appeal Nos.6414-6417 of 2008** titled as '**Pundlik Jalam Patil (D) by LRs. Vs. Exe. Eng. Jalgaon Medium Project & another**', on **03.11.2008**, held that where a party approaches the Court seeking condonation of delay without giving actual facts, the withholding of the facts itself is sufficient to reject the application without any further enquiry. The Hon'ble Supreme Court of India further held that the sufficient cause for the condonation of delay should be disclosed in unequivocal terms in the application. The relevant paragraphs No.12, 23 and 24 of the said judgment are as under: -

“12. Whether the High Court properly exercised its discretion?

The High Court in its order having noticed the relevant fact in categorical terms held that there was no substance in the plea that it was unaware about the judgment and award passed by the Reference Court since it was a party before the Reference Court and contested the matter. The High Court also found that the decision of the Joint Secretary to acquiesce was communicated to the beneficiary of the acquisition and therefore, its plea about the unawareness of the award and decision

taken by the Government cannot be accepted. The High Court in its order emphatically rejected the ground raised by the respondent in that regard. In such view of the matter can it be said that the High Court properly exercised its jurisdiction? It is true that the power to condone the delay rests with the court in which the application was filed beyond time and decide whether there is sufficient cause for condoning the delay and ordinarily the superior court may not interfere with such discretion even if some error is to be found in the discretion so exercised by the court but where there is no sufficient cause for condoning the delay but the delay was condoned, it is a case of discretion not being exercised judicially and the order becomes vulnerable and susceptible for its correction by the superior court. The High Court having found that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the Reference Court ought to have refused to exercise its discretion. The High Court exercised its discretion on wrong principles. In that view of the matter we cannot sustain the exercise of discretion in the manner done by the High Court.

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23. Statutes of limitation are sometimes described as 'statutes of peace'. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in **Rajender Singh and others v. Santa Singh and others, [(1973) 2 SCC 705]** has observed : "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". In **Motichand v. Munshi [(1969) 2 SCR 824]**, this court observed that this principle is based on the maxim "interest republicae ut sit finis litum, that is, the interest of the State requires that there should be end to litigation but at the same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression.

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.

24. Public interest undoubtedly is a paramount consideration in exercising the courts discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.”

In the present case, applicant-appellant withheld the material facts, which have already been noticed by this Court, while making an application including the fact that the son of the applicant is a lawyer, hence, engaging another lawyer by the applicant-appellant to file an appeal, whose name has been withheld from this Court, casts a shadow of doubt on the causes stated by applicant-appellant for the delay. Not only this, a right is created in opposite party after the expiry of the limitation to file an appeal, which right cannot be taken merely on an application filed by the applicant-appellant without disclosing the cogent reasons.

The Hon'ble Supreme Court of India while deciding **Civil Appeal No.1166 of 2006** titled as '**Balwant Singh (dead) Vs. Jagdish Singh and others**', on **08.07.2010** held that the applicant, who seeks aid of the Court for exercising its discretionary power for condoning the delay, is expected to state correct facts and not lies before the Court so as to mislead. Not only this, the sufficient cause should be stated in the application itself so that not only the conduct of the applicant-appellant, but bona-fide of the applicant-appellant could be ascertained in forming the opinion whether the delay in approaching the Court is genuine and was beyond the control of the applicant. The Hon'ble Supreme Court of India further laid down that while condoning the delay, the Courts have to keep in mind whether the delay could have been easily avoided by the applicant-appellant acting with normal care and caution. The relevant paragraphs No.15 to 17 of the said judgment are as under: -

“15. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:-

"13 (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words

'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting

respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal. We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (*supra*).

16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

17. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court. It is the abnormal conduct on the part of the applicants, particularly Har-Inder Singh, who had appeared as AW4 in the trial and

was fully aware of the proceedings, but still did not inform the counsel of the death of his father. The cumulative effect of all these circumstances is that the applicants have miserably failed in showing any 'sufficient cause' for condonation of delay of 778 days in filing the application in question.”

Keeping in view the facts and circumstances recorded hereinbefore, which makes it clear that the averments made in the application seeking the condonation of delay are not specific and are vague and when considered in the light of the fact that the applicant-appellant remained a Sarpanch of a village as well as Secretary of a Cooperative Society and his son is a practicing lawyer, the grounds given in the application cannot be termed as sufficient so as to inspire confidence to accept the said reason advanced to condone the delay in order to disturb the crystalized right which has accrued in favour of the respondents to seek the finality of the litigation, hence, the application deserves to be dismissed and is accordingly dismissed.

As the application for condonation of delay is dismissed, the accompanying Regular Second Appeal along with other pending applications stand rejected on the ground of being time barred as well.

February 11, 2021
naresh.k

**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No