

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

CR-1890-2017 (O&M)

Date of decision: 18.10.2022

Union Territory of Chandigarh and others

...Petitioners

Versus

Mukul Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S.Lalli, Advocate for the petitioners

Mr. P.K.Kukreja, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. The First Appellate Court has dismissed the civil appeal while refusing to condone the delay in filing the appeal. In a suit filed for grant of decree of declaration, the trial court has held that the respondent is entitled to allotment of a built booth, preferably in Sector 11, Chandigarh. The respondent's claim is based on the policy instructions issued by the Union Territory, Chandigarh. The appellants filed an application for condonation of delay of 4 years and 35 days in filing the first appeal. It was asserted that the file was sent to the office of Legal Remembrancer-cum-Director Prosecution, Chandigarh, on 08.06.2011 and the officer demanded a copy of the plaint and the written statement filed in the suit. Thereafter, due to inadvertence the said file was tagged with the other dumped files and unfortunately, the appeal could not be filed within the prescribed time. The First Appellate Court has found that the explanation furnished, for seeking condonation of colossal delay, is not sufficient and hence, dismissed the appeal.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. No doubt, the delay is colossal and the explanation furnished for seeking the condonation of the delay is precisely worded, however, the court is required to be conscious of the fact that the first appeal is an important right available to a litigant in civil proceedings. The First Appellate Court is the last court of re-appreciation of facts and evidence. It is a case where the trial court has held that the respondent is entitled for being considered for allotment of a built up booth, preferably in Sector 11, Chandigarh. The entitlement of the respondent is required to be re-examined on merits. Although there is a delay but the respondent can be compensated with costs. Whereas, refusal to condone the delay may result in a meritorious matter being defeated, at the threshold, on account of delay in filing the appeal. In the present case, the appellants have explained that there has been an error in processing the file. The application for condonation of delay is supported by an affidavit. Sh.Rajnish Malhi, Section Officer, Estate Office, UT, Chandigarh, has appeared and explained the delay. This matter has been extensively discussed in the case of **G.Ramegowda, Major vs. Special Land Acquisition Officer, Bangalore'** 1988(2) SCC 142. The relevant portion is extracted as under:-

14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See: ***Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.*** AIR 1962 SC 361 : (1962) 2 SCR 762; ***Shakuntala Devi***

Jain v. Kuntal Kumari AIR 1969 SC 575 : (1969) 1 SCR 1006] ; ***Concord of India Insurance Co. Ltd. v. Nirmala Devi*** [(1979) 4 SCC 365 : AIR 1979 SC 1666 : (1979) 3 SCR 694] ; ***Lala Mata Din v. A. Narayanan*** [(1969) 2 SCC 770 : AIR 1970 SC 1953 : (1970) 2 SCR 90]; ***Collector, Land Acquisition v. Katiji*** (1987) 2 SCC 107 etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In *Katiji case* [(1987) 2 SCC 107] this Court said: (SCC p. 108, para 3)

“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 injustice being done because of a non-deliberate delay. . . .

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

15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or

agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes “sufficient cause” for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have “a little play at the joints”. Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process.”

4. Keeping in view the aforesaid facts, the order passed by the First Appellate Court is set aside and the delay in filing the first appeal is condoned, subject to payment of costs of Rs.10,000/-, which shall be payable to the respondent by way of demand draft. The revision petition stands allowed. The first appeal is restored to its original number before the First Appellate Court, which is requested to decide the appeal within a period of three months, positively, from the date of receipt of copy of this order.

5. Disposed of.

6. All the pending miscellaneous applications, if any, are also disposed of.

18.10.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE