

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5267 of 2018 (O&M)

Date of Decision: 27.10.2022

Chandigarh Administration and Others

... Petitioner(s)

Versus

Fariad Chand and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Jagjot Singh Lalli, Additional Standing Counsel
with Mr. Karan Vir Singh, Advocate
for the petitioner(s).

Mr. Ashok Sehgal and Mr. Arvinder Singh, Advocates
for the respondents.

Anil Kshetarpal, J.

1. This revision petition has been filed by the Chandigarh Administration challenging the correctness of the order dated 30.05.2018, passed by the First Appellate Court, while refusing to condone the delay of 186 days in filing the first appeal.

2. The respondents have filed a suit for grant of decree of declaration that they are entitled to allotment of booths in view of a license in their favour. The suit was initially dismissed on 28.04.2014. However, the First Appellate Court remanded the matter back to the trial Court vide judgment dated 25.07.2016. This time, the trial Court decreed the suit on 09.09.2016. The first appeal, along with an application for condonation of delay of 186 days in filing the appeal was filed on 12.04.2017, which has

been dismissed. In explanation of the delay, the petitioners have stated that

they had no idea that the case was disposed of. They came to know about the decree only when they received notice of the execution petition.

3. In order to justify the aforesaid stand, the communication of Assistant District Attorney to the Estate Office has been produced, wherein it has been explained that in the civil cases, the copies of the judgments are applied by the Clerks of the concerned office. However, due to heavy load of work, a certified copy of the judgment was not applied for. The Assistant District Attorney, vide communication dated 30.03.2017 has informed the Estate Office about the decision in the suit along with an advice to file an appeal against the same. Accordingly, the appeal was filed on 12.04.2017.

4. On the direction of this court, the Additional Deputy Commissioner has filed an affidavit explaining the delay while annexing the copies of the various communications that were exchanged between the office of the District Attorney as well as the Estate Office. In my opinion, the First Appellate Court has taken a myopic view of the entire matter. No doubt, there is a delay of 186 days in filing the first appeal. However, the Estate Office is a public office run by the public servants. There was a communication gap between the Assistant District Attorney and the Estate Office which explains the delay in filing the appeal. In such circumstances, the First Appellate Court should have condoned the delay while permitting the parties to address arguments on merits of the case. The First Appellate Court is the last Court for re-appreciation of evidence. The case involves an important question with regard to entitlement of the respondents to the allotment of booths. Their suit was initially dismissed. In such circumstances, the petitioners' only chance of getting the facts and evidence

re-appreciated should not have been defeated by taking a hyper-technical view. This matter has been intensively discussed by the Supreme Court in ***G.Ramegowda, Major vs. Special Land Acquisition Officer, Bangalore'*** 1988(2) SCC 142, the relevant portion whereof is 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)2SCR90]***; ***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.”

5. Keeping in view the aforesaid facts and discussion, the present revision petition is allowed. The impugned order dated 30.05.2018, passed by the First Appellate Court is set aside. The delay of 186 days in filing the first appeal is condoned. The first appeal filed by the petitioners is restored to its original number. Let the First Appellate Court decide the appeal on merits, within a period of three months, positively, from the date of receipt

of certified copy of this order.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

October 27, 2022
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No