

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

CR-1306-2019 (O&M)

Date of Decision: October 12, 2022

Municipal Corporation, Chandigarh ...Petitioner

Versus

Mahavir Singh Yadav ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashish Rawal, Advocate with
Mr. Gursimran Kaur, Advocate for the appellant.

Mr. Onkar Rai, Advocate for respondent No.1.

HARKESH MANUJA, J.

Present revision petition arises out of an order dated 21.11.2018 passed by the Court of learned Additional District Judge, Chandigarh; whereby an application filed under Section 5 of the Limitation Act (hereinafter referred to as 'the Act') seeking condonation of delay of 185 days in filing the first appeal at the instance of petitioner has been dismissed.

The facts leading to the present case are that respondent who retired from the services of petitioner from the post of Supervisor Grade-I of Community Centre, Sector 44, 45, 46 & 47, Chandigarh filed a suit for mandatory injunction for grant of interest on the delayed payment of some of his retiral benefits. Initially, the petitioner herein appeared before the learned Civil Court and filed its written statement, however, later was proceeded against ex-parte vide order dated 30.11.2016. The learned trial

Court vide its judgment and decree dated 06.01.2019 directed the respondent- plaintiff to be entitled for interest amounting to Rs.2,64,983/- along with interest @ 6% per annum from 20.09.2010 to 11.05.2012 including pendente lite and future interest @ 6% per annum till actual realization. Further the respondent/ plaintiff was also held entitled to interest @ 6% per annum on the amount of Rs.9,30,200/- from 30.09.2010 to 10.10.2012 including pendente lite and future interest @ 6% per annum till actual realization.

Based on the judgment and decree dated 06.01.2010, the respondent filed execution application dated 11.04.2017; wherein notice was issued to the petitioner herein. Having served with the notice of execution proceedings, the petitioner herein woke up and filed its appeal before the learned first Appellate Court, challenging the judgment and decree dated 11.04.2017. Since there was a delay of 185 days, an application under Section 5 of the Act seeking condonation of the same was also filed along with the appeal.

It is the said application under Section 5 of the Act which has been dismissed by the learned first Appellate Court vide impugned order dated 21.11.2018, and the same has been challenged by way of present revision petition.

I have heard learned counsel for the parties and gone through the records. Though, in the application filed under Section 5 of the Act, the petitioner herein has not been able to provide all the minute details explaining sufficient cause as regards the delay of 185 days in filing the appeal, however, from the careful and cumulative perusal of the paper-book,

it can be traced out that as soon as the petitioner came to be served with the notice of execution, first appeal was filed; challenging the judgment and decree dated 06.01.2017 passed by learned Civil Judge (Junior Division), Chandigarh.

In this case, an execution application, based on judgment and decree dated 06.01.2017 was filed at the instance of respondent- decree-holder before the learned Executing Court on 11.04.2017 and thereafter on receipt of notice from the Executing Court, the first appeal along with an application under Section 5 of the Act seeking condonation of delay was filed before the learned first Appellate Court.

A perusal of the impugned order shows that perhaps an hyper-technical approach has been adopted by the learned first Appellate Court; rather than adopting a pragmatic approach of deciding the *lis* between the parties on merits by condoning the delay in filing the first appeal.

No doubt, Section 5 of the Act envisages explanation of delay and makes no distinction in this regard between the state authorities and the private litigant (s), yet adoption of proof with mathematical certainty may lead to miscarriage of justice, besides resulting in mischief being played through masterly management of causing delay in filing statutory appeal. Accordingly, I deem it appropriate to order condoning delay of 185 days in filing the first appeal at the instance of the petitioner.

Further in the facts and circumstances of the present case, as the respondent herein is a retired employee of the petitioner who has been dragged into this unnecessary litigation before this Court and thus, needs to be suitably compensated for the same.

Accordingly, in order to balance the equities, the revision petition is allowed. Impugned order dated 21.11.2018 (P-9) passed by the learned first Appellate Court, Chandigarh is hereby set aside subject to payment of costs of Rs.30000/- to be paid to the respondent before the learned first Appellate Court on next date of hearing. It is made clear that the costs shall be recovered from the erring officer(s).

It would be appreciated in case the learned first Appellate Court makes sincere endeavour to hear and decide the appeal within a period of three months from today.

Pending application(s), if any, shall also stand disposed of.

October 12, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>