

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

CR No.1237 of 2022 (O&M)
Reserved on: 09.05.2022
Date of Decision : 17.05.2022

Jeet SinghPetitioner

VERSUS

Raghubir Singh ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mukesh Garg, Advocate for the petitioner.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India read with Section 151 CPC has been filed impugning the order dated 15.02.2022 (Annexure P-1) passed by the lower Appellate Court whereby the application filed by the respondent for condonation of delay in filing the appeal has been allowed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for specific performance of agreement to sell dated 27.02.2012. Vide order dated 24.07.2015 (Annexure P-4) the said suit was dismissed for non-filing of the court fees. On 11.09.2017 the plaintiff-respondent filed an appeal (Annexure P-5) against the order dated 24.07.2015. The appeal was accompanied with an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal.

The defendant-petitioner appeared and filed a reply (Annexure P-6) to the application seeking condonation of delay. Vide impugned order dated 15.02.2022 (Annexure P-1) the lower Appellate Court allowed the application for condonation of delay in filing the appeal subject to payment of Rs.2,000/- as costs. The costs were paid by the plaintiff-respondent on 15.02.2022 itself. Hence, the present revision petition.

Learned counsel for the defendant-petitioner has contended that the lower Appellate Court has erred in law in allowing the application for condonation of delay in filing the appeal. It was contended that the plaintiff-respondent knew all along about the dismissal of his suit by the Trial Court vide order dated 24.07.2015 but deliberately did not file an appeal against the same within time. It was argued that the plaintiff-respondent also gave no details about the exact date when he found out about the dismissal of his suit and infact the entire attempt was only to harass the defendant-petitioner.

I have heard learned counsel for the defendant-petitioner.

In the impugned order dated 15.02.2022 (Annexure P-1) the lower Appellate Court has *inter-alia* held that “*it is worth making mention that the applicant has made specific mention supported by affidavit that as per assistance rendered by the lawyer the court fee was to be appended at the final stage and he came to know in the month of August 2017 qua dismissal of the suit for non-fixation of court fee. As per the ratio decidendi laid down by Hon’ble Apex Court in Esha Bhattacharya V/s Managing Committee of Raghunath Nafa Academy and Others 2013(4) CCC 399 (SC) - wherein governing principles for condoning of delay have been laid down and it has been held that there should be a liberal, pragmatic, justice-*

oriented, non-pedantic approach. The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective, substantial justice being paramount and pivotal, the technical consideration should not be given undue and uncalled for emphasis. Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact. It has been further held that adherence to strict proof should not affect public justice. The conduct, behaviour and attitude of party relating to its in action or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that courts are required to weigh the scale of balance of justice in respect of both the parties and that the said principle cannot be given a total go by in the name of liberal approach. Thus, taking into note the guidelines laid down by the Hon’ble Apex Court in the above referred case law and further that on account of lack of proper communication, appellant could not file the appeal in time. Thus, in ends of justice so that the lis can be adjudicated finally on merits and there is end to it for all times to come, the court finds merit in the submissions put forth by the learned Counsel for the applicant, the present application filed under-section 5 of the Limitation Act for seeking condonation of delay in filing the appeal is hereby allowed subject to Rs.2000/- as costs”.

As has been noticed by the lower Appellate Court, the application seeking condonation of delay was supported with an affidavit of the plaintiff-respondent. Paras 3 and 4 of the said application dated 11.09.2017 read as under:

“3. That the counsel of the plaintiff in the lower Court never called him in connection with his case and even never informed him about the proceedings of the case. The plaintiff visited his counsel in the lower Court in this case initially for 2/3 times to know about the proceedings of the case and every time the Munshi of the counsel in the lower Court told that his personal appearance is not yet required and he will be called as and when required in the Court.

4. That the plaintiff came to know in the month of August, 2017 from his counsel in the lower Court that his suit has been dismissed for non-filing of the court fees. But when the plaintiff asked his counsel that he was told and advised by him that the court fees will have to be paid as ordered by the Hon’ble Court at the final stages of the case, then his counsel in the lower Court failed to give any proper reply in this regard and rather advised the plaintiff to file appeal against the order of the Court.”

In N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123] the Supreme Court held :

“13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part

of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

The Supreme Court in **State of Nagaland vs. Lipok Ao [(2005)**

3 SCC 752] held that :

“12. In O.P. Kathpalia v. Lakhmir Singh [(1984) 4 SCC 66] a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector, Land Acquisition v. Katiji [(1987) 2 SCC 107] a Bench of two Judges considered the question of limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression “sufficient cause” is adequately elastic to enable the court to apply the law in a meaningful

manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression “every day’s delay must be explained” does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common-sense, pragmatic manner. 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. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party

was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant. The delay was accordingly condoned.”

The lower Appellate Court has relied upon the decision by the Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. [2013(4) RCR Civil 785]** wherein it was held :

“15. From the aforesaid authorities the principles that can broadly be culled out are :

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :*

(a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

The law is also settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The present case does not fall in the latter category.

The lower Appellate Court while allowing the application for condonation of delay in filing the appeal made it subject to costs of Rs.2,000/-. The impugned order records that the costs were paid on the very same day. Learned counsel for the defendant-petitioner has not denied or even averred that costs were not accepted on 15.02.2022. Having accepted the costs without demur, the defendant-petitioner in any event cannot challenge the impugned order. The principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs

where the other party has accepted the costs in pursuance of the said order

applies in those cases where the order is in the nature of a conditional order, as in the present case, and payment of costs is a condition precedent to the petition being allowed. In such a case it is open to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits.

In view of the discussion above and the law laid down by the Apex Court, this Court finds that the impugned order passed by the lower Appellate Court does not suffer from any illegality or infirmity. The lower Appellate Court has condoned the delay in filing the appeal for sufficient cause. Substantial justice being paramount and pivotal the technical considerations do not call for being given undue and uncalled for emphasis.

The present revision petition, which is devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

17 May, 2022
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NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : YES/NO