

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

**CM-1777-LPA-2018 in/and
LPA-649-2018 (O&M)
Decided on :15.11.2022**

Union Bank of India & others

.....Appellant(s)

Versus

Satish Babu Gupta

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.K.K.Gupta, Advocate for the appellant (s).

Mr.Durgesh Kumar, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

CM-1777-LPA-2018

Application has been filed for condonation of delay of 302 days in filing the appeal preferred by the Bank.

Same has been opposed by filing reply and taking the stand that there is no sufficient cause made out to condone the delay.

From a plain reading of the application it is apparent that the Bank was never interested in filing the appeal since the day the learned Single Judge decided the case on 24.05.2017. In the application, it has been averred that notice was received in the cross-appeal filed by the employee on 24.08.2017 in the Central Office at Mumbai. Thereafter, the Regional Office, Chandigarh was asked to engage the counsel and to instruct the counsel to file appeal on behalf of the Bank. It has been mentioned that somehow due to miscommunication, counsel had appeared in the Letters Patent Appeal filed by the respondent-employee but failed to

file the appeal on behalf of the Bank. Resultantly, the certified copy of the

order was applied on 16.04.2018 which was supplied on 17.04.2018. The appeal was then filed on 23.04.2018 and thus, delay of 302 days occurred.

It is pertinent to mention that the cross-appeal stands dismissed as withdrawn on 12.06.2020 on account of the fact that the benefit which had been denied by the learned Single Judge could be claimed as there was a circular for availing the benefit, with a pre-condition of withdrawal of the Court case.

Thus, from the above sequence of events which is supported by affidavit of Senior Regional Manager of the Bank, it would be apparent that the Bank was never interested at any time in filing the appeal. It was only on account of filing of the appeal by the employee they woke up against the order of the learned Single Judge. In such circumstances, it is apparent that no sufficient cause is made out to condone the delay as it is settled principle that delay is only to be condoned if the litigant is not negligent and indolent. Reliance can be placed upon the principles laid down by the Apex Court in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation & another, 2010 (5) SCC 459** and **Isha Bhattacharya Vs. Managing Committee of Raghunathpur, Nafar Academy & others, 2014 (4) SCC (CrI.) 450** wherein it has specifically been held that if the explanation is fanciful and there is lack of bona fide, then the delay is not to be condoned. Relevant portion of the judgment reads as under:

“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 scrutinized 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.”

It is apparent that neither name of the counsel has been mentioned as to who was instructed and a perusal of the averments would also go on to show that the Bank was also never interested in filing the appeal.

Resultantly, in view of the above discussion, the present application for condonation of delay of 302 days in filing the appeal is

hereby dismissed. Accordingly, the main appeal and other misc.application(s) also stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

15.11.2022

sailesh

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No