

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

CR-256-2019 (O&M)

Date of decision: 21.11.2022

Market Committee, Babain

....Petitioner

Versus

Maya Ram

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Garg, Advocate for the petitioner
Mr. Hardeep Singh Dhillon, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. While assailing the correctness of the impugned order dated 24th August, 2018, passed by the First Appellate Court, the Market Committee, Babain, has come up in a revision petition before this Court. The First Appellate Court has dismissed its first appeal while refusing to condone the delay of 3 years and 10 days in filing the appeal.

2. The relevant, in brief, are as under.

3. The respondent (the plaintiff in the trial court) filed a suit for grant of decree of declaration to the effect that the notice No. 784 dated 19th December, 2009 issued by the defendant is illegal, null and void and the plaintiff has been wrongly directed to close all the business activities other than that of the agricultural produce in the allotted booth. In substance, the plaintiff claims that he has been allotted Booth no. 141 against a payment of a sum of Rs.62,000/- in the Grain Market, Babain and as per the terms and conditions of the allotment, the defendants had to offer possession of the plot to the plaintiff within 30 days from the

date of allotment, provided that all the mandatory facilities in the market are taken care of. It has been pleaded that the plaintiff has deposited a sum of Rs.73,060.02 against the price of Rs.62,000/- whereas the defendant has wrongly issued notice demanding the payment of the balance amount as well as penalty for not constructing on the allotted plot. The trial court decreed the suit on 18th July, 2014. While filing the first appeal, the petitioner, Market Committee filed an application for seeking the condonation of delay of 3 years and 10 days. Para 2 and 3 of the application reads as under:-

“2. That there is delay of 3 years 10 days in filing the appeal due to the reason that the appellant has served a letter dated 1.8.2014 to the head of the department, but the sanction for filing the appeal has not been received by the appellant for sufficient long time.

3. That now the appellant has received the sanction letter for filing the appeal on dated 16.8.2017 and the appellant without any delay filing the appeal before this Hon’ble court today.”

The respondent, while filing the reply, stated as under:-

“2-3 That the para No.2 & 3 of the application are wrong and denied. The appellant/applicant had failed to place relevant correspondence between 01.08.2014 to 16.08.2017 inspite of application moved by the answering respondent. The applicant is having full flagged legal department and is bound to take necessary decision to file the appeal within a period of 30 days. No valid ground has been given for not filing the appeal within time. The ground taken by the applicant is no ground to condone a delay of more than three years.”

4. The First Appellate Court has dismissed the application on the ground that the petitioner has failed to furnish sufficient cause for filing the appeal after such an inordinate delay.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. On the one hand, the learned counsel representing the petitioner contends that the respondent did not dispute that the petitioner, within the period of limitation, requested its head office to grant sanction for filing the appeal but it was received only on 16th August, 2017. He submits that the First Appellate Court never called upon the petitioner to produce the aforesaid documents.

7. On the other hand, learned counsel representing the respondent submits that the petitioner was required to furnish an explanation for the inordinate delay of 3 years and 10 months in filing appeal. He submits that the petitioner failed to furnish the supporting documents. The First Appellate Court has correctly dismissed the application as well as the appeal.

8. The petitioner herein is a public authority. It has been constituted in order to develop the market yards in order to facilitate the sale of agricultural produce brought in by the farmers. The dispute is with regard to the allotment of a booth in the market yard developed by the petitioner. It is the First Appellate Court, which is required to reappreciate the evidence with reference to the pleadings of the parties in order to decide the matter. Thus, the filing of the first appeal is an important right available to a party to get the evidence reappreciated. While examining the question of condonation of delay in the cases of public authority, the Supreme Court in **G.Ramegowda, Major vs.**

Special Land Acquisition Officer, Bangalore' 1988(2) SCC 142 has

held 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.”

9. There is no material to show that the petitioner was ever called upon by the First Appellate Court to produce a document. The petitioner sent a letter to its Head Office for the grant of sanction within the period of limitation. However, it remained pending in the Head Office for more than a period of 3 years. The first appeal was filed immediately on receipt of the sanction from the Head Office. The working of a public authority is managed by its officials and they are required to follow the procedure laid down in the rules of their business.

In such circumstances, some extra indulgence is required to be given to such authority in the matters of condonation of delay.

10. Keeping in view the aforesaid judgment of the Supreme Court, the delay of 3 years and 10 days in filing the appeal is condoned, subject to payment of Rs.5,000/- as cost. The first appeal filed by the petitioner shall stand restored to its original number before the First Appellate Court. The parties through their learned counsels are directed to appear before the First Appellate Court on 19 December, 2022.

11. The petition stands allowed.

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

21.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE