

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

263

CR-5756-2018 (O&M)
Date of decision : 14.09.2023

District Social Welfare Officer, Kurukshetra and othersPetitioners

Versus

Krishna DeviRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Rajbir Singh, D.A.G., Haryana for the petitioners.

Mr. R.S. Mamli, Advocate for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The instant revision petition has been filed by the petitioners impugning the order dated 15.01.2018 passed by learned District Judge, Kurukshetra, whereby the appeal filed by the petitioners/defendants against judgment and decree dated 30.11.2016 passed by learned Additional Civil Judge (Senior Division), Kurukshetra along with an application for condonation of delay on 215 days in filing the appeal has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated in the petition are that the respondent/plaintiff was a permanent resident of Village Umri, Tehsil Thanesar, District Kurukshetra. She was an old lady aged about 67 years. As per notification of Haryana Government, a person of the age of 60 years was entitled to the benefit of old age pension scheme. Upon completion

of 60 years of age, the department concerned started giving old age pension to the respondent/plaintiff. Petitioner/defendant No.1 issued a letter/notice dated 25.07.2016 to the respondent/plaintiff on the ground that her age was found less than 60 years due to which she was directed to deposit Rs.51,960/- along with interest w.e.f. January 2013 to June 2016. On which the respondent/plaintiff has filed a suit for declaration to the effect that notice dated 25.07.2016 issued by the petitioners/defendants was illegal, null and void and not binding upon her rights. Relief of mandatory injunction was also sought for direction to the petitioners/defendants to release the old age pension of the respondent/plaintiff and continue the same. The said suit was decreed in favour of the respondent/plaintiff vide judgment and decree dated 30.11.2016 passed by learned Additional Civil Judge (Senior Division), Kurukshetra. The petitioners/defendants have filed an appeal against the abovesaid judgment and decree dated 30.11.2016 along with an application under Section 5 of the Limitation Act, for condonation of delay of 215 days in filing the appeal. The lower Appellate Court did not condone the delay and dismissed the application for condonation of delay vide impugned order dated 15.01.2018 and consequent to dismissal of an application, appeal has also been dismissed. Aggrieved against the said order the petitioners have filed the present revision petition.

3. Learned State counsel appearing for the petitioners submits that the appeal against the judgment and decree dated 30.11.2016 passed by learned Additional Civil Judge (Senior Division), Kurukshetra was

filed along with an application for condonation of delay of 215 days in filing the appeal, however, the application for condonation of delay has been dismissed by learned lower Appellate Court and consequently, the main appeal has also been dismissed. There is delay of 215 days in filing the appeal before the lower Appellate Court, which has been duly explained by the petitioners. The explanation given by the petitioners is as under :-

“That the impugned judgment and decree was passed on 30.11.2016 and the petitioners applied for certified copy of the judgment and decree, which was received on 28.12.2016 and thereafter on 04.01.2017 the petitioners sent the case for approval before the competent authority for getting sanction to file appeal and 18.05.2017 vide letter No.10159 the petitioners were informed regarding filing of appeal. Then after obtaining permission to file appeal from the Competent Authority the petitioners drafted the appeal and sent the same to head office to get the same approved and on 10.07.2017 the Additional Chief Secretary to Govt. of Haryana had issued instructions in the office of District Social Welfare Officer, Kurukshetra to file the appeal and the present appeal is being filed promptly without any delay. The period of limitation to file the present appeal is being filed promptly without any delay. The period of limitation to file appeal calculated from 30.11.2016, the date of judgment and decree then there is delay of 8 months in filing the appeal.”

Learned State counsel submits that the delay in filing the appeal was genuine and bona fide and not intentional and beyond the control of the petitioners. The petitioners shall suffer loss and injury, if the delay is not

condoned and the appeal is not heard on merits.

4. On the other hand, learned counsel for the respondent has argued that there is no illegality or infirmity in the impugned order dated 15.01.2018 passed by the lower Appellate Court. Therefore, the present revision petition may be dismissed.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. It was observed by the Apex Court in the case of ***Collector, Land Acquisition, Anantang Vs. Mst. Katiji : AIR 1987 Supreme Court 1353*** that each and every day delay need not be explained and the meritorious claim cannot be thrown away into the dustbin without giving adequate hearing. The Delhi High Court, while condoning 52 days delay in filing the appeal in the case of ***Jyotsana Sharda Vs. Gaurav Sharda : 2010 (5) RCR (Civil) 819*** observed as under:-

*"..No doubt, originally the Apex Court in **Ram Lal v. Rewa Coalfield, AIR 1962 Supreme Court 351**, had held that while seeking condonation of delay under Section 5 of the Limitation Act the application must not only show as to why he did not file the appeal on the last day of limitation but he must explain each day's delay in filing the appeal. The later judgments of the Apex Court have considerably diluted this requirement of explaining each days delay by a party. The latest trend and the ratio cases which the Apex Court has laid down in the judgments is that the Court must adopt a liberal approach rather than pedantic approach while doing so. It must see the bonafides of the person who is preferring the appeal rather than seeing the quantum of delay which has been occasioned. Reliance in this regard can be placed on **Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors. AIR 1987 Supreme Court 1353.**"*

7. In ***Jyotsana Sharda's case (supra)***, the Delhi High Court further observed as under:-

"With utmost respect to the impugned order I feel that it is not the job of the Court to advise as to what ought to have been done or ought not to have been done by a party. The Court has to only see as to whether the explanation which is furnished by a party for approaching the Court in after a delay whether the explanation given by him is genuine one or not and secondly the Court must not adopt an approach to defeat the substantive right of a party and ignore the consideration of the merits of the appeal on flimsy technicalities because procedural laws should not be resorted to defeat the rights of the parties to get their appeal considered on merits."

8. Though in the judgment of ***Balwant Singh (Dead) Vs. Jagdish Singh and others : 2010 (3) RCR (Civil) 856*** the Apex Court took the view that if by the expiry of the period of limitation a right has accrued, that cannot be taken away on asking of a party but the Apex Court excluded those cases where the applicant was thoroughly negligent and there was no plausible explanation for condonation of delay. In ***Balwant Singh's case (supra)*** the Apex Court observed as under:-

"Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly as result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

9. Yet this judgment, if read in balance to the judgment which deal with the grievance of the petitioners, who were not negligent in

filing the appeal within time, but the delay occurred for good and sufficient reasons, as reasons beyond his control, then he should instead of condemning him unheard, be given a chance to have the decision on merits.

10. Thus, the Apex Court has relaxed the right of condonation in cases where sufficient cause is shown and the delay is unintentional. The Apex Court in a judgment delivered in case of ***Lanka Venkateswarl (D) by LRs. Vs. State of A.P. and others : 2011 (2) RCR (Civil) 880*** laid down the following guidelines for condoning the delay:-

- “(i) *The Courts generally adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause under Section 5 of the Limitation Act.*
- (ii) *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly.*
- (iii) *Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that.*
- (iv) *Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers-All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to law. 1987 (2) SCC 107: 1999 (2) RCR (Civil) 578: 2010 (3) RCR (Civil) 856, relied.”*

11. In the instant case, the petitioners have not only set up sufficient cause and shown their bonafide but have also tried to justify the delay for non-filing the appeal within the period prescribed, therefore, the petitioners cannot be said to be either negligent or defaulter.

12. Thus, keeping in view the aforesaid law of the land and also keeping the note of the judgment delivered in the case of *Mrs. Saroj and others Vs. Sh. Baljeet Singh and another : 2010 (3) RCR (Civil) 929* and also the fact that the petitioners have a good case on merits, which also could be considered as a sufficient cause for the purpose of condonation of delay, this Court is of the considered opinion that the appeal should have been decided on merits instead of dismissing the same on the ground of delay.

13. Resultantly, this petition is allowed, impugned order dated 15.01.2018 passed by the lower Appellate Court is set aside and the delay in filing the appeal before the lower Appellate Court is condoned, subject to payment of Rs.5,000/- as costs to be paid to the plaintiff/respondent. The first Appellate Court is directed to proceed in accordance with law.

14. Misc. Application(s) pending, if any, shall also stand disposed of accordingly.

14.09.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes