

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-20407-CII-2013 &
CM-20408-CII-2013 in/&
CR-6122-2013 (O&M)
Date of Decision :28.04.2023

Subhash Chand

...Petitioner

Versus

Dev Dutt and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raj Kumar Gupta, Advocate for petitioner.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-20407-CII-2013

Application is allowed as prayed for.

CM-20408-CII-2013

The present application has been filed for condonation of delay of 17 days in re-filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 17 days in re-filing the present appeal is condoned.

CR-6122-2013

Present revision petition has been filed challenging the order dated 16.04.2013 passed by the Lower Appellate Court by which, the application, filed along with the appeal, for condonation of delay has been

dismissed and consequently, the appeal preferred by the petitioner-defendant has also been dismissed.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

Respondent-plaintiff filed a civil suit claiming the specific performance of the agreement to sell dated 27.3.1991. Notice in the suit was issued to the petitioner, who was defendant in the said suit. It is a conceded fact that summons were received by the petitioner-defendant and he had appeared before the trial Court by engaging a counsel. Not only this, a written statement was also filed by the petitioner-defendant controverting the allegations alleged in the suit but thereafter, the petitioner-defendant absented himself from the proceedings and did not defend the said suit and was proceeded exparte. Keeping in view the fact that petitioner-defendant has not put in his defence during the proceedings in respect of the suit filed by the respondent-plaintiff, petitioner-defendant as he was proceeded exparte vide order dated 10.04.2010, the trial Court passed the exparte judgment and decree dated 18.12.2009 against the petitioner-defendant.

Petitioner-defendant filed an appeal challenging the exparte judgment and decree dated 18.12.2009 of the trial Court along with the application seeking condonation of delay by pleading that exparte judgment and decree dated 18.12.2009 was not to his knowledge and the same came to his knowledge only in March, 2012 when he received the summons for execution of the exparte decree in question and, hence, delay in filing the appeal be condoned.

Lower Appellate Court considered the facts mentioned in the application seeking condonation of delay of more than two years and seven

months and found that no valid justification was given for not filing the appeal within time frame and by the impugned order dated 16.04.2013, application seeking condonation of delay was dismissed and, consequently, the appeal filed by the petitioner-defendant was also dismissed. Order dated 16.12.2013 passed by the lower appellate Court dismissing the application seeking condonation of delay in filing the appeal as well as the main appeal is impugned in the present revision petition.

Learned counsel for the petitioner-defendant argues that in the facts and circumstances of the present case, delay in filing the appeal needs to be condoned especially, when due justification was already given before the Court below that it was only when the summons were received for the execution of the exparte decree dated 18.12.2009, the said order had come to the knowledge of the petitioner-defendant and immediately thereafter, he preferred an appeal therefore, in order to decide the lis between the parties on merits, the delay in filing the appeal should have been condoned.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The arguments raised are to be tested on the basis of the facts and circumstances of the present case as well as the settled principle of law.

It is a conceded fact that petitioner-defendant was served in the suit filed by the respondent-plaintiff. It is also a conceded fact that petitioner-defendant filed a written statement controverting the claim of the respondent-plaintiff and, thereafter, he abandoned the said proceedings and was proceeded exparte in April, 2009. Once, the petitioner-defendant despite the knowledge of the pendency of the proceedings abandoned the proceeding, pleading the fact that he only came to know about the same on

receiving the summons for execution of ex-parte judgment and decree in March, 2012 is of no consequences. It is the actions of the petitioner-defendant which have resulted in a situation that firstly he was proceeded ex-parte and, thereafter, an ex-parte judgment and decree dated 18.12.2009 was passed by the trial Court against him and he did not even challenged the ex-parte judgment and decree within time frame prescribed. The petitioner-defendant is himself to be blamed for passing of an ex-parte judgment and decree by the trial Court. Once, the petitioner-defendant abandoned the proceedings himself and was proceeded ex-parte, which order was never challenged by him within the time frame prescribed, order passed by the Lower Appellate Court so as to reject the bonafide being pleaded, needs no interference by this Court.

The law on the issue qua condonation of delay has already been settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2474-2475-2012** titled as **Office of the Chief Post Master General and others vs. Living Media India Limited and another** decided on 24.02.2012 wherein, it has been held that each day's delay is to be explained to show the bonafide that delay was beyond the control of the applicant seeking condonation of delay. Further, Hon'ble Supreme Court of India has held that where the rights of the party have already been crystallized, the said crystallized rights cannot be taken away merely on the assertions of the application seeking condonation of delay. Relevant paragraphs of the judgment are as under:-

In our view, it is the right time to inform all the government bodies, their agencies and instrumentality that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process.

The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay.

14) In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.”

In the present case, rights of the respondent-plaintiff to seek benefit of the judgment dated 18.12.2009 of the trial Court have already been crystallized. Whether the said rights can be taken away on account of an application filed by the petitioner-defendant on the ground that petitioner-defendant only came to know about the exparte judgment and decree in question in March, 2012 is a valid justification to set aside the judgment and decree is to be decided in the present case.

As noticed hereinbefore, the petitioner-defendant had already abandoned the proceedings, which resulted in exparte judgment and decree dated 18.12.2009. That being so, plea of the petitioner-defendant that as an exparte judgment and decree in question was not in his knowledge, the delay should be condoned, cannot be accepted, keeping in view the settled principle of law noticed hereinbefore as the said explanation is not a valid justification extended.

Learned counsel for the petitioner-defendant relies upon the

judgment of the Hon'ble Supreme Court in Civil Appeal No.4575-76-1998 titled as N. Balakrishnan vs. M. Krishnamurthy decided on 03.09.1998 to contend that lapse on the part of the poor litigant should be kept in mind while deciding the application seeking condonation of delay. Reliance is being placed on para-13 of the judgment which is as under:

“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 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 a 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.”

Bare perusal of the above said paragraph of the judgment clearly would go to show that it is only when the Court comes to conclusion that there is no malafide or dilatory tactics on the part of the applicant, relief of condonation of delay is to be granted and even while granting the relief Court should not forget the opposite party altogether.

In the present case, non-appearance of the petitioner-defendant in the suit and his being proceeded ex parte shows that the petitioner-defendant was already having knowledge of the proceedings. Nothing has come on record as to why, the petitioner-defendant abandoned the said proceedings and why after the period of 03 years of passing of the ex parte judgment and decree, appeal was not preferred by the petitioner-defendant.

Keeping in view the facts and circumstances of the present case,

it is not the case where request for condonation of delay was justifiable especially, when the rights of the other party have already been crystallized. Hence, no ground of interference by this Court is made out and the present revision petition is accordingly dismissed.

April 28, 2023

aarti

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No