

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

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CR No.6582 of 2017

Date of decision: 16.03.2023

Housing and Urban Development Corporation Ltd.
(HUDCO)

..... **Petitioner**

Versus

Pawan Kumar and another

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Munish Jolly, Advocate
for the petitioner.

Mr. Ramneek Vasudeva, Advocate
for respondent No.1.

HARSIMRAN SINGH SETHI, J.(ORAL)

The present civil revision petition has been filed challenging the order dated 03.02.2017 (Annexure P-4) by which, the application filed under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 760 days in filing the appeal, has been dismissed.

Learned counsel for the petitioner argues that the petitioner did not have the knowledge about the judgment and decree dated 11.09.2009 passed by the trial Court and the same only came to the notice of the petitioner on 27.11.2011 and hence, there was a delay of 760 days in filing the appeal. He submits that as the suit was for recovery, dismissing the appeal filed in Lower Appellate Court on the ground of non-maintainability of the appeal not filing the appeal within limitation, would result in loss to the public exchequer. Hence, the order dated 03.02.2017 may kindly be set aside and the lower Appellate Court be directed to hear the appeal on merits.

Learned counsel for respondent No.1 submits that the petitioner should have been vigilant enough to file the appeal within the time frame rather, the evidence of the petitioner was closed by an order by the trial Court, which fact clearly shows that the respondents were not interested in pursuing the remedy being available to them in a diligent manner. Hence, no discretion needs to be allowed in favour of the petitioner so as to set aside the order dated 03.02.2017 and the present petition may kindly be dismissed.

I have heard learned counsel for the parties at length and have gone through the record.

The issue regarding condonation of delay in filing the appeal has been settled by the Hon'ble Supreme Court in a recent judgment passed in ***Civil Appeal Nos.2474-2475 of 2012*** titled '***Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another***', ***decided on 24.02.2012***, in which Hon'ble Supreme Court has held that each and every day's delay needs to be explained so as to show the bona fide that the non-filing of the appeal within the limitation prescribed was beyond the control of the applicant seeking condonation of delay, despite due diligence. Relevant paragraph of the said judgment reads as under:-

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities 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.

In the present case, the conduct which has come on record to show that the respondents were not pursuing the remedy of the suit in a diligent manner wherein, even the evidence was closed by an order by the trial Court.

Further in the present case, the delay in filing the appeal is more than 2 years and nothing has been shown that the petitioner was diligently pursuing either the civil suit or the appeal but the circumstances were such that the appeal could not be preferred within the limitation provided. The petitioner has failed to justify the delay in a manner required under law.

Further, while condoning the delay, the Court has also to see whether the rights of the parties have been crystallized or not. In the present case, the suit filed by the petitioner was dismissed by the competent Court of law on 11.09.2009. Non-filing of an appeal within the period of limitation crystallized the right in favour of the respondents. The crystal right cannot be taken away merely because the petitioner woke up from slumber after a period of two years. The fact projected before the Court below as well as before this Court seeking condonation of delay does not entitle the acceptance of petitioner's prayer as being raised in the present civil revision petition.

In the light of above, the order passed by the trial Court, in the facts and circumstances of the present case, is just and proper and does not need any interference at the hands of this Court.

Accordingly, the revision petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

16.03.2023

D.Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No