

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

107

**CR-9187-2017
Decided on : 29.08.2023**

KAUSHAL NATH AND ORS

. . . Petitioners

Versus

MUNICIPAL COUNCIL THANESAR KURUKSHETRA

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Namit Gautam, Advocate and
Mr. Santosh Sharma, Advocate
for the petitioners.

Mr. Vivek Saini, Advocate for
M.C. Thanesar.

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been filed by the plaintiffs against the impugned order dated 01.11.2017 whereby First Appellate Court/learned District Judge, Kurukshetra dismissed the application, seeking condonation of delay in filing the civil appeal and the appeal filed by the plaintiffs (petitioners herein), being the same time barred.

2. Plaintiffs (total twelve) filed a suit for permanent injunction against defendant-Municipal Council, Thanesar seeking a decree for restraining defendants from interfering in the peaceful cultivating possession and ownership of the plaintiffs over the land measuring 3 Kanal 0 Marla, comprising in Khewat No.2295/2153, Khatoni No.2642, Khasra No.200/15, situated at Mauja Darra Kalan, Tehsil Thanesar, District Kurukshetra and

also from dispossessing the plaintiffs from the suit land forcibly and illegally or in any other manner.

3. Suit was contested by the defendant-Municipal Council resulting into the dismissal of the same vide judgment and decree dated 28.11.2016. Thereafter, all the appellants approached the Appellate Court by way of an appeal under Section 96 of the Civil Procedure Code (CPC), challenging the judgment and decree dated 28.11.2016 passed by the trial Court. Said appeal was suffering with the delay of total 38 days in its filing.

In the application filed under Section 5 of the Limitation Act, 1963, for seeking condonation of delay of 38 days in filing the appeal, plaintiffs (petitioners herein) explained that appellant No.1 (Kaushal Nath) who was pursuing the case on behalf of all the plaintiffs in the trial Court was not able to contact his counsel for knowing the status of the case due to his busy schedule in the business affairs. In fact, it was also averred in the application that he had forgotten the date of the case fixed before the trial Court. All the plaintiffs were depending upon the wisdom of appellant No.1- Kaushal Nath, for the purpose of pursuing the proceedings before the Courts.

4. It is further averred that thereafter, said Kaushal Nath contacted his counsel on 16.01.2017 and got to know the factum of dismissal of the suit by the trial Court vide order dated 28.11.2016. Immediately thereafter, an application for getting certified copy of the judgment and decree dated 28.11.2016 was moved and simultaneously, all the other plaintiffs were also informed about dismissal of the suit.

5. Relevant extracted part of the application seeking condonation of delay in paragraphs No.3, 4, 5 and 6, is reproduced here below:-

“3. *That the delay of 38 days in filing the present appeal is*

only due to the reason that the plaintiff appellant No.1 Kaushal Nath is pursuing the case behalf of all the appellants / plaintiffs in the trial: court and Kaushal Nath had not contacted his counsel for knowing the status of the case due to his busyness in his business as Kaushal Nath plaintiff/appellant No.1 had forgotten the date of the case fixed in the Trial court. The other applicants / appellants are only depending upon the appellant No.1 Kaushal Nath who is pursuing the case in the Trial Court on behalf of all the plaintiffs / appellants.

4. *That when Kaushal Nath applicant/ appellant No.1 had contacted his counsel on 16.01.2017 then only he came to know that the suit of the plaintiffs / appellants stands dismissed by the Trial Court on 28.11.2016 and thereafter the applicant/ appellant No.1 Kaushal Nath had immediately applied for certified copy of the judgment and decree dated 28.11.2016 and thereafter communicated the dismissal of the suit vide judgment and decree dated 28.11.2016 to the other appellants / plaintiffs.*

5. *That the delay in filing of the present appeal is nly due to the reason mentioned above and hence the delay occurred is only bonafide one. The last date for filing of the present appeal was 02.01.2017 on the opening day of the court after winter vacation and hence there is a delay of 38 days in filing the present appeal.*

6. *That the delay of 38 days in filing the present appeal is not intentional rather the same is bonafide one 7 FEB 2017 due to the reason mentioned above. Even after obtaining the certified copy the meeting was arranged by the applicant No.1 Kaushal Nath at this residence and now the applicants / appellants are filing the present appeal.”*

6. In the reply filed by the defendant-Municipal Council, Thanesar, formal objection was taken and the relevant part extracted from the said reply is also reproduced here under:-

“It is respectfully submitted as under:-

1&2. That para No. 1&2 of the application are matter of record.

3&4. That para No.3&4 of the application are wrong and denied. False. and concocted story has been put forward in this paras of the application. The applicants have complete knowledge about the judgment and decree dated 16.1.2017 and

order was announced by the Learned Trial Court in the presence of the plaintiff No.1 and his counsel. Moreover, it is the duty of the party to remain in touch with his counsel.

5. That para No.5 of the application is admitted to the extent of filing of appeal after the expiry of period of limitation, but rest of the para is wrong and denied.

6. That para No.6 of the application is wrong and denied.

7. That para No.7 of the application is matter of record.

8. That para No.8 of the application is wrong and denied. No one can take the benefits of his own wrongs.

9. That para No.9-of the application is wrong and denied. Prayer para of the application is wrong and denied.

It is, therefore, prayed that the application under reply may kindly be dismissed with costs, in the interest of justice.

Place: Kurukshetra.

Date:

*Respondent
M.C.Thanesar”*

7. Thereafter, First Appellate Court gave its reasoning and dismissed the application moved by the plaintiffs (petitioners herein) under Section 5 of the Limitation Act for condonation of delay of 38 days.

8. Primarily, application for condonation of delay has been dismissed on three counts i.e.:

i) There is no authorization appended with the application given to the plaintiff No.1/appellant No.1-Kaushal Nath by the other 11 plaintiffs for pursuing the proceedings of the suit/appeal on their behalf;

ii) The affidavits of all the plaintiffs for the purpose of seeking condonation of delay for the period of 38 days, has also not

been appended; and

iii) The Court distinguished between mere delay and inordinate delay, with the latter lacking *bona fide* inaction or being negligent and thus, out of purview of Section 5 of the Limitation Act, 1963.

9. I have gone through the impugned order and noticed that the application has been dismissed, primarily, for the reason that certain supporting documents which the Court wanted to see for its own satisfaction, were not appended with the application.

10. This Court also finds that there is nothing mentioned about the opportunity given to the applicants/appellants (petitioners herein) to comply with the same or to place on record the required documents as desired by the Court. Regarding the third reasoning itself as has been noticed by the Court, there is nothing observed thereafter, whether the delay period of 38 days is inordinate one and also without explanation.

11. The judgment relied upon by the trial Court lays down the principle of law but it does not find any mention about the right of appeal of a litigant, which otherwise is available to him under the law.

Thus, it appears that the referred judgment relates to the factual situation where the delay caused in filing the suit in its original jurisdiction was under question.

12. On the other hand, learned Senior counsel for the petitioners relies upon the judgment of Hon'ble Apex Court in "**N. Balakrishnan v. M. Krishnamurthy**, 1999(2) R.C.R. (Civil) 578:Law Finder Doc ID #29282".

Paragraph No.13 of the said judgment says 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 the 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 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.”

13. Mr. Vivek Saini, learned counsel for the respondent/defendant, while defending the impugned order submits that prayer of the petitioners has been rightly rejected by the First Appellate Court, and good amount of reasons are also mentioned therein. Vehemently, it is submitted that remedy available under the law is not meant for the people, who are not awakened about their rights within the prescribed time period. Thus, prays for dismissal of the revision petition.

14. There is no observation given by the First Appellate Court in the impugned order that *“the explanation given by the applicants-appellants/plaintiffs (petitioners herein) smack with any mala fides or any prejudices going to be caused to the other side i.e. defendant if the delay of 38 days is condoned by it.”*

15. Considering the circumstances in its totality, and after hearing the respective counsel from both the sides and perusing the material available on record along with the cited judgments, I find that there is force in the submissions addressed by the Senior counsel for the petitioners i.e.

Mr. Akshay Bhan, Senior Advocate.

16. Resultantly, while allowing the present revision petition, impugned order dated 01.11.2017, passed by learned District Judge, Kurukshetra (First Appellate Court) is **set-aside**, and application for condonation of delay of 38 days is accepted for the purpose of deciding the appeal on merits.

Consequently, appeal is restored to its original position for its decision on merits.

17. For the purpose of deciding the appeal on its merits, the parties i.e. plaintiffs and the respondent herein (defendant) are directed to appear before the Court of learned District Judge, Kurukshetra on 13.09.2023 for further proceedings.

Revision petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 29, 2023
Lavisha

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