

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

252

CR-354-2021

Date of decision : 14.11.2023

Haryana Urban Development Authority and anotherPetitioners

Versus

Bharat BhushanRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Anil Chawla, Advocate for the petitioners.

NAMIT KUMAR, J. (ORAL)

1. The instant revision petition has been filed by the petitioners impugning the order dated 11.02.2020 passed by learned District Judge, Kurukshetra, whereby the appeal filed by the petitioners/defendants against judgment and decree dated 03.02.2017 passed by learned Civil Judge (Junior Division), Kurukshetra, along with an application for condonation of delay 07 months and 08 days in filing the appeal has been dismissed.

2. The brief facts leading to the filing of the present petition as has been narrated are that the booth site No.193, Sector-17, Kurukshetra was allotted to the respondent vide allotment letter dated 27.12.2001 on consideration amount of Rs.5,81,000/-. 25% of the consideration money was deposited in time and allotment was accepted. The remaining 75% amount could have been paid in 60 days time from date of issuance of allotment letter without interest or in 8 half yearly

installments along with interest @ 15% p.m. Possession of booth was offered vide allotment letter dated 27.12.2001. In the meanwhile, Punjabi Smaj Sabha and another filed one Civil Suit against the petitioners challenging the approved layout plan and the respondent was also impleaded as defendant in the suit. The learned Civil Court dismissed the application for interim injunction vide order dated 23.05.2002 and the learned First Appellate Court dismissed the appeal vide order dated 15.12.2004. Aggrieved against the said orders, the Punjabi Smaj Sabha filed civil revision which was dismissed by this Court. Thereafter, the respondent was again issued a letter dated 22.02.2008 regarding offer of possession. The respondent took possession of booth on 24.03.2008. However, the respondent failed to pay even a single installment. In this regard, notices dated 21.03.2007 and 22.01.2009 under Section 17(1) of HSVP Act, 1977 was issued against the respondent. Another notice dated 01.07.2013 under Section 17(1) of HSVP Act, 1977 was issued followed by notice dated 23.12.2013 under Section 17(2) of HSVP Act, 1977. The Estate Office issued notice dated 07.04.2016 under Section 17(1) of HSVP Act, 1977 and a further notice was issued on 22.12.2016 under Section 17(2) of HSVP Act, 1977. Vide order dated 25.06.2017 penalty of Rs.1,22,330/- was imposed upon the respondent by the Estate Office, Kurukshetra. Thereafter, the respondent has filed Civil Suit No.281 of 2014 for declaration with consequential relief of permanent and mandatory injunction which was decreed in favour of the respondent vide judgment and decree dated 03.02.2017 passed by learned Civil Judge (Junior

Division), Kurukshetra. The petitioners/defendants have filed appeal against the abovesaid judgment along with an application under Section 5 of the Limitation Act, for condonation of delay of 07 months and 08 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 11.02.2020 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 counsel for the petitioners submits that the appeal against the judgment and decree dated 03.02.2017 passed by learned Civil Judge (Junior Division), Kurukshetra was filed along with an application for condonation of delay of 07 months and 08 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 07 months and 08 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 delay of seven months and eight days in filing the present appeal is only due to the reason that the process of taking permission to file the appeal from the Head Quarter HUDA, Panchkula is lengthy in nature and hence the delay of seven months and eight days in filing the present appeal has been caused.”

Learned counsel for the petitioners 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. I have heard learned counsel for the petitioners and perused the relevant documents.

5. 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**."*

6. 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."

7. 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."

8. 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 their control, then they should instead of condemning them unheard, be given a chance to have the

decision on merits.

9. 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.”*

10. The Coordinate Bench of this Court in ***Mrs. Saroj and others Vs. Sh. Baljeet Singh and another : 2010 (3) RCR (Civil) 929*** has observed that the application for condonation of delay deserves to be allowed as the applicants have good case on merits which also constitutes a sufficient cause for the purpose of condonation of delay.

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 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 11.02.2020 passed by the lower Appellate Court is set aside and the delay in filing the appeal before the lower Appellate Court is condoned and the appeal is ordered to be restored to its original number 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.

14.11.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes