

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107)

CM-4265-C-2023 and
CM-4266-C-2023 in/and
RSA-1123-2023
Date of Decision : April 26, 2023

Director, Sports & Youth Organization Department and others
.. Appellants

Versus

Jaswant Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4265-C-2023

Present application has been filed for condonation of delay of
410 days in filing the accompanying appeal.

A bare perusal of the averments made in paragraph 2 the
application shows that after the judgment was rendered by the Courts below,
the matter was put for opinion before the Legal Remembrancer and
Administrative Secretary to Government of Haryana on 27.12.2021 on
which date, the authorities concerned opined that this is not a fit case for
filing an appeal. Not feeling satisfied with the said opinion, the matter was
again sent to the same authority for re-considering his opinion and on
19.01.2022, the said authority again opined that keeping in view the
judgment rendered by the Court below, the case is not fit for filing the

regular second appeal. Keeping in view the said opinion, the Department

agreed with the view that the Regular Second Appeal should not be filed. Thereafter, the case was put for implementation of the judgment and decree on 25.02.2022 and the appellant No.1 approved the implementation of the decree in question on 25.02.2022 itself.

Though it has come on record that the Department had decided not to file the Regular Second Appeal but they did not implement the judgment which forced the decree-holder to file an execution. After the filing of the execution, the Department started resisting the execution by raising the objection that the matter is pending before the Finance Department for relaxation of Rule 3.17 of the Punjab Civil Services Rules and it was in January 2023, the Finance Department directed to file an appeal.

It may be noticed that the Department of Finance was not a party respondent to the suit. Once, the administrative Department accepted the judgment which fact has already come on record, then turning around during the pendency of the execution application so as to file an appeal, is no valid justification for condonation of delay of more than one year.

As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No. 2474-2475 of 2012 titled as Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another, decided on 24.02.2012***, each day's delay has to be counted so as to arrive whether delay in filing the appeal is bona fide or the same was due to the laxity on the part of the litigant and in the present case, the delay has not been explained and on the basis of the judgment of the Hon'ble Supreme Court of India cited hereinbefore, the same has rightly been declined. The

relevant paragraphs of the said judgment are as under:-

“2. The following issues arise for consideration:

a) Whether the Office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court. Depending on the outcome of the above issue, other issues to be considered are:

b) Whether the impugned advertisement inserted in the Reader's Digest issue of December, 2005 is in conformity with the requirement of law.

c) Whether the Department has made out a case for interference under Article 136 of the Constitution of India to reopen concurrent findings of fact rendered by the High Court.

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 bona fide 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, the Department itself had accepted in the application that the competent authority accepted that no Regular Second Appeal is to be filed but thereafter, after the expiry of the limitation period and that too while the execution petition was pending, the present Regular Second Appeal has been filed along with the application seeking condonation of delay of 410 days. The justification which has been given in the application seeking condonation of delay, does not entitle merits keeping in view the facts and circumstances mentioned hereinbefore and as the delay in filing the appeal, the condonation of which is sought, is attributable to the appellants themselves only.

Hence, once the right of the respondent has already been crystallized, in the absence of any valid justification coming forward for the condonation of delay, the said application cannot be accepted and the same is dismissed.

RSA-1123-2023

As the application seeking condonation of delay of 410 days in filing the appeal is dismissed, present appeal also stands dismissed.

CM-4266-C-2023

As the main appeal has been dismissed, present application also stand dismissed.

April 26, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No