

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

CR-3232-2023

Date of Decision : 09.10.2023

Yash Pal Joura

..... Petitioner

Versus

Naveen Mahajan

..... Respondent

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

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Present : Mr. Tarsem Lal, Advocate for the petitioner.

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**VIKRAM AGGARWAL, J (ORAL)**

1. The present revision petition filed under Article 227 of the Constitution of India assails the order dated 15.05.2023, passed by the Addl. District Judge, Pathankot vide which the application, filed by the respondent for condonation of delay of 12 days in filing the appeal was allowed.

2. The facts, as emanating from the paper book, are that a suit for possession by way of specific performance was filed by the petitioner-plaintiff against the respondent-defendant. The same was decreed on 27.10.2022. An appeal was preferred by the respondent-defendant against the said judgment and decree dated 27.10.2022. The said appeal was accompanied by an application for condonation of delay of 12 days in filing the appeal (Annexure A-1). The application was opposed by way of a reply (Annexure A-2). Vide impugned order dated 15.05.2023, the application was allowed and the delay of 12 days in filing the appeal was condoned leading to the filing of the present revision petition.

3. I have heard learned counsel for the petitioner and have perused the paper book.

4. Learned counsel for the petitioner has vehemently contended that the First Appellate Court erred in allowing the application for condonation of delay. Learned counsel first read the application (Annexure P-1) and submitted that the averments made therein do not disclose any sufficient cause for delay of 12 days which occurred in filing the appeal. It has been contended that false allegations were levelled by the respondent-defendant against the petitioner-plaintiff which have caused undue harassment to the petitioner-plaintiff. It has been contended that a detailed reply (Annexure A/P-2) was filed to the application (Annexure A/P-1) in which it was denied that any talks of a compromise were going on. However, the First Appellate Court did not consider anything and passed the impugned order in a cursory manner. Learned counsel minced no words in vehemently contending that the impugned order dated 15.05.2023 passed by the Addl. District Judge, Pathankot is illegal and that the same deserves to be set aside.

5. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

6. As per Section 5 of the Limitation Act, if sufficient cause is shown for not preferring an appeal or an application (other than an application under the provisions of Order XXI CPC) within the prescribed period, the same may be admitted after the prescribed period as well. It is by

now well settled that the Courts have to adopt a liberal approach while dealing with an application for condonation of delay. It is also well settled that normally, parties should be heard on merits and should not be non-suited on technicalities. In the case of *Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar Academy and others 2013 (4) RCR (Civil) 785*, the Hon'ble Apex Court culled out the principles with regard to condonation of delay. It was laid down by the Hon'ble Apex Court as under:-

From the aforesaid authorities the principles that can broadly be culled out are:

- (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in

the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

6(i). Still further, in the case of Basawaraj and another versus

Special Land Acquisition Officer 2013 (14) SCC 81, the Hon'ble Supreme Court of India was dealing with a judgment of the High Court of Karnataka wherein the appeals filed by the appellants had been dismissed on the ground of limitation. In this case also, the Hon'ble Apex Court examined as to what would amount to a sufficient cause as defined under Section 5 of the Limitation Act. It was held that the expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done but only so long as negligence, inaction or lack of bonafidies cannot be imputed to the party concerned. It was held that whether or not sufficient cause had been shown, could be decided on the facts of a particular case and no straitjacket formula was possible. In this case, there was a delay of 5 ½ years in filing the appeal and the High Court of Karnataka had dismissed the appeals on the ground of limitation. The Hon'ble Apex Court, after examining the facts of the case and law on the subject, declined to interfere in the decision of the Karnataka High Court and, therefore, rejected the appeals. It was held by the Hon'ble Apex Court as under:-

9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted

diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.(See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 Supreme Court 1336 ; Lala Matadin v. A. Narayanan, AIR 1970 Supreme Court 1953 ; Parimal v. Veena @ Bharti, 2011(2) RCR

(Civil) 155 : 2011(1) Recent Apex Judgments (R.A.J.) 611 and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 Supreme Court 1629.

10. In Arjun Singh v. Mohindra Kumar, AIR 1964 Supreme Court 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.(Vide: Madanlal v. Shyamlal, 2002(2) RCR (Civil) 361 ; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., 2002(2) RCR (Civil) 337.

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely,(1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and(3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

(See: Popat and Kotecha Property v. State Bank of India Staff Assn., 2005(4) RCR (Civil) 334 : (2005) 7 SCC 510 Rajendar Singh & Ors. v. Santa Singh & Ors., AIR 1973 Supreme Court 2537 and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448

14. In P. Ramachandra Rao v. State of Karnataka, 2002(2) RCR (Criminal) 553 , this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in A. R. Antulay v. R.S. Nayak, 1992(2) RCR (Criminal) 634 .

6(ii). The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

7. Reverting to the facts of the present case, the suit was decided on 27.10.2022. The appeal was filed with a delay of 12 days. In the application for condonation of delay, it was averred that some talks of a compromise were going on but with a malafide intention, the petitioner-plaintiff withdrew from the talks after the period of limitation had expired. These averments were denied in the reply and detailed submissions were made. The First Appellate Court, instead of going into the allegations and counter allegations, came to the conclusion that since valuable rights of the parties were involved, the matter should be decided on merits and, therefore, condoned the delay in filing the appeal. If one goes through the crux of the findings of the Hon'ble Apex Court in the judgments referred to in the previous paragraph coupled with the facts of the present case, it emerges that the delay of 12 days was not one on which the respondent-defendant should have been non-suited.

8. In the considered opinion of this Court, sufficient cause was shown in the application. There was no point in framing issues on the allegations and counter allegations and then asking the parties to lead evidence. The First Appellate Court was satisfied that the delay deserved to be condoned which it rightfully did. It is settled law that the matters should be decided on merits and parties should not normally be non-suited on technicalities unless and until the delay is exponential and no valid reasons have been given for the same.

9. Before parting with the order, it needs to be observed that the

present petition is infact mis-directed and in a way has led to the wastage of the time of the Court. Further, the language used in the revision petition by repeatedly referring to the Appellate Court as “his” and stating that the application had been decided on irrelevant grounds and that the observations made were perverse, are just on the line between being simple averments and being contemptuous. It has also been averred that the Addl. District Judge, Pathankot deliberately ignored to consider the sufficient ground shown by the respondent and the blasting reply of the petitioner which was an illegal approach. Even the manner in which arguments were addressed leaves a lot to be desired. However, keeping in view the fact that learned counsel is a fresh entrant to the profession after superannuating from the Indian Revenue Service (as stated by learned counsel himself during the course of arguments on a query put by this Court), this Court does not intend to proceed any further. However, this Court would advise learned counsel to exercise restraint while drafting his petitions and addressing arguments in the Court.

In so far as the revision petition is concerned, for the reasons mentioned in the preceding paragraphs, I do not find any merit in the same and the revision petition is hereby dismissed.

(VIKRAM AGGARWAL)  
JUDGE

09.10.2023  
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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |