

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCM-3171-LPA-2019 in/and
LPA-1445-2019

Date of Decision: 18.01.2023

Harnek Singh

.....Appellant

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWANPresent: Mr. G.S. Nagra, Advocate, with
Mr. B.S. Mann, Advocate,
for the appellant.

Mr. Abhay Pal Singh Gill, D.A.G., Punjab.

Mr. Vaneet Thakur, Advocate, for
Mr. B.S. Seemar, Advocate,
for respondent No. 5.

G.S.SANDHAWALIA, J. (ORAL)

The present appeal is preferred against the order of the learned Single Judge, dated 16.11.2015, passed in CWP-3179-2012, dismissing the prayer of the appellant for quashing the orders dated 30.10.2009 (Annexure P-2) passed by the Deputy Commissioner-cum-District Collector, SAS Nagar Mohali, appointing respondent No. 5 Jaik Ram as '*Lambardar*' of Village Majria, Tehsil Kharar, District SAS Nagar, as well as the order dated 24.01.2012 (Annexure P-4), passed by respondent No. 1- Financial Commissioner, Revenue, affirming the order of the Deputy Commissioner.

The appeal is delayed by 1315 days and the averments made in the application for condonation of delay of 1315 days in filing the appeal are that one Sh. G.S. Kaler, Advocate, practicing in District Court,

Chandigarh, was engaged for filing the LPA and the same was not filed. The appellant has then gone to the office of the counsel on 26.07.2019 after a period of 04 years and obtained the papers and therefore, the delay is sought to be condoned.

The appeal was thereafter, filed on 31.07.2019 before this Court. The application has been opposed by filing a reply by the private respondents while submitting that the law helps those who are vigilant over their rights but will not help those who sleep on their rights. It has been averred that there is no sufficient cause given for condoning the delay and neither any action nor any complaint was filed against the said counsel. The prescribed period of limitation is 30 days for filing a LPA and there is nothing on record to show that the said counsel has ever been engaged by the appellant.

In view of the above, we are of the considered opinion that the matter is not liable to be reopened at this belated stage, as the dispute is regarding the appointment of the '*Lambardar*' of the village. It would amount to putting the clock back on account of the conduct as such of the appellant himself. In this regard, reliance can be placed upon the judgment of the Supreme Court in Esha Bhattacharjee vs. Managing Committee of Reghunathpur Nafar Academy and others 2013 (12) SCC 649, wherein delay of 2449 days had been condoned by the Division Bench of the Calcutta High Court but Hon'ble the Apex Court had set aside the same by holding as under:-

“15. 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 scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can

*be exhibited in a non-challant manner requires to be
curbed, of course, within legal parameters.”*

Thus, keeping in view the above, we are of the considered opinion, that the explanation given is fanciful as such and it is hard to accept the fact that a person who is agitating for the right as a '*Lambardar*' of the village, would sleep over his rights over 04 years and even not visit his counsel after entrusting him the papers. The said counsel engaged to file the appeal on behalf of the appellant is also not practicing in this Court but in the District Court, as per the application and therefore we are further not able to accept the fact that the counsel who does not ordinarily appear before this Court would be engaged for the said purpose.

Resultantly, we do not find any ground to condone the delay of 1315 days in filing the appeal.

Accordingly, the application as well as the main appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

January 18, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No