

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

**CM-2285-LPA-2022 in/and
LPA No. 950 of 2022 (O&M)
Date of Decision: 10.01.2023**

Sudesh Kumar

.....Appellant

Vs.

**Presiding Officer Industrial Tribunal-cum-Labour Court, Rohtak and
others**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present: Mr. Judgepreet Singh Warring, Advocate,
for the applicant-appellant.**

G.S.SANDHAWALIA, J. (ORAL)

CM-2285-LPA-2022

This application has been filed under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908, for condoning the delay of 3578 days in filing the present appeal.

The Civil Writ Petition was dismissed on 30.11.2012 against the Award dated 26.10.1998 in the presence of the counsel for the appellant. The sole ground as such taken is that since the writ petition had been admittedly for regular hearing, therefore the appellant was under the impression to take time for final adjudication and he was not in contact with his counsel. On enquiry from the Cyber Cafe about the status of the present case, he came to know about the dismissal of the petition. Accordingly, the prayer made in that regard that the delay is neither

intentional nor deliberate.

We are not in agreement with the averments and the arguments raised by the counsel that an inordinate delay as such for over a decade is likely to be condoned at the asking. In the present times and age the communication as such has been improved to the extent that messages are being flashed from their mobile phones. The inability of the appellant to remain in touch with his counsel for a decade shows that he had lost interest in pursuing the litigation.

In such circumstances and keeping in view the settled provisions as laid down by the Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Reghunathpur Nafar Academy and others** 2013 (12) SCC 649, that the lack of *bona fides* is to be taken into consideration and the concept of liberal approach cannot be allowed a totally unfettered free play for the litigant. The relevant paragraphs read 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.

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

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.”*

Resultantly, we do not find any ground to condone the delay of 3578 days in filing the appeal.

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

(G.S. SANDHAWALIA)
JUDGE

January 10, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No