

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-502-LPA-2018 in/and
LPA-205-2018
Date of Decision:13.04.2023.

STATE OF HARYANA

...PETITIONER

VS

SARBJIT SINGH PUREWAL AND OTHERS

...RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Dinesh Ghai, Advocate and
Mr. Nikhil Ghai, Advocate for
applicant-respondent Nos.1(i) to 1(iv).

Mr. Hitesh Pandit, Additional A.G., Haryana.

M.S. RAMACHANDRA RAO, J. (ORAL)

CM-502-LPA-2018

This is an application under Section 5 of the Limitation Act for
condonation of delay of 271days in filing the present appeal.

In this application as well as in an additional affidavit filed on
09.07.2018, the said delay is explained in following manner:-

Learned Single Judge dismissed the Writ Petition filed by the
State (CWP No 719 of 2014). The opinion was sought from the office of
learned Advocate General on 27.03.2017. He tendered his opinion on
14.07.2017 that it is a fit case for filing a Letters Patent Appeal.

CM-502-LPA-2018 in/and

-2-

LPA-205-2018

Admittedly, the LPA was filed on 13.12.2017 i.e. 05 months after the Advocate General, Haryana gave his opinion that it is a fit case for filing the LPA.

According to the appellants copy of the judgment of the learned Single Judge was received in the office of appellant on 21.07.2017 along with the opinion of the Advocate General, Haryana; thereafter opinion of the Legal Remembrancer, Haryana was also sought and was received on 08.08.2017; grounds of LPA were not received from the office of the Advocate General, Haryana; that the same were then prepared in the office of the applicant and after typing the necessary document draft of the LPA was prepared, grounds were in-corporated and the same was submitted for approval on 22.09.2017 through Tehsildar (Sales) headquarters. It is stated that the Assistant District Attorney made some corrections in the draft Letters Patent Appeal and returned the file to the dealing hand on 25.09.2017. The dealing hand after making corrections in the draft Letters Patent Appeal submitted the file to the Assistant District Attorney on 25.09.2017. Assistant District Attorney submitted the file on 25.09.2017 to District Attorney who marked the file to the Secretary, Revenue on 25.09.2017. He cleared the file on 11.10.2017, thereafter draft Letters Patent Appeal was got vetted on 31.10.2017 from the office of Advocate General, Haryana. Corrections were

CM-502-LPA-2018 in/and
LPA-205-2018

-3-

again made by the office of Advocate General, Haryana and the draft LPA was re-drafted and put before the Secretary Revenue on 21.11.2017 for signatures. He signed it on 23.11.2017 and the file was received on the branch on 27.11.2017. It was then sent on 29.11.2017 to the office of Advocate General, Haryana and then it was filed on 13.12.2017.

We failed to understand why when the Advocate General, Haryana had give opinion on 14.07.2017 that the case is fit for filing of Letters Patent Appeal, steps were not taken immediately to file the same and why 5 more months was taken to finalise the appeal. The whole attitude of the appellant in the matter indicates that there has been very relaxed and leisurely attitude towards the whole issue and there is negligence in not filing the Letters Patent Appeal within the prescribed period of 30 days.

Supreme Court of India has commented on this in its decision in *Office of the Chief Post Master General & Others Vs. Living Media India Limited & Another, (2012) 3 SCC 563*.

The relevant paras of the said decision are as thus:-

11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the

CM-502-LPA-2018 in/and
LPA-205-2018

-4-

High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable

CM-502-LPA-2018 in/and
LPA-205-2018

-5-

explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

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 bonafide 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

CM-502-LPA-2018 in/and
LPA-205-2018

-6-

acceptable and cogent reasons sufficient to condone such a huge delay.

Accordingly, the appeals are liable to be dismissed on the ground of delay.

We find that no reaonsable and acceptable explanation has been offered for delay in filing the appeal. Therefore, we find no merit in this application. It is accordingly dismissed. Consequently, the appeal is also dismissed.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

13.04.2023
priyanka

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