

CM-12255-C-2018;
CM-12254-C-2018;
CM-12253-C-2018;
CM-12252-C-2018 in
RSA-4599-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-12254-C-2018;
CM-12253-C-2018;
CM-12252-C-2018 in
RSA-4599-2018
Date of Decision :23.03.2023

Bau Masih

...Appellant

Versus

The Chairman, Punjab State Electricity Board
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Raj Kaushik, Advocate for the applicant-appellant.

Mr. Deep Inder Singh Walia, Advocate
for the respondents.

* * *

Harsimran Singh Sethi, J. (Oral)

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Along with the present regular second appeal, an application seeking condonation of delay of 871 days in filing the accompanying appeal has been filed.

In the said application, not even a single ground has been given for justifying the delay of 871 days in filing the present appeal. Complete application seeking condonation of delay in filing the present appeal is reproduced as under:-

“1.That the appellant is filing the present
accompanying appeal before this Hon'ble Court

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against the judgment and decree dated 18.02.2015 passed by the learned Lower Appellate Court vide which the appeal filed by the respondents had been partly allowed by the Ld. Lower Appellate Court.

2. That thereafter instead of filing the RSA against that order, the appellant filed the departmental appeal against the order passed by the respondents which had been passed after the judgment and order dated 18.02.2015 passed by the Ld. Lower Appellate Court.

3. That after the passing of the orders by the respondents vide which the appeal of the appellant had been dismissed, the appellant filed CWP-14663-2017 and the arguments on the maintainability of the writ petition had been raised and thereafter this Hon'ble Court was pleased to grant the liberty to the appellant to file the RSA. Copy of the order is attached with the appeal.

4. That in this way, delay of 871 days has arisen which is neither intentional nor deliberate but occurred due to the reasons mentioned above.

5. That in case the delay of 871 days is not condoned, the appellant would suffer an irreparable loss and injury.

It is therefore, respectfully prayed that in view of the submissions made in the application, the application may kindly be allowed and the delay of 871 days in filing the appeal may kindly be condoned, in the ends of justice, equity and fair play.

It is a settled principle of law settled by the Hon'ble Supreme Court of India that each day's delay is to be explained so as to seek condonation of delay. As per the judgment of Hon'ble Supreme Court of India in **Civil Appeal No.2474-2475-2012** titled as **Office of the Chief Post Master General and others vs. Living Media Indian Ltd. and another** decided on 24.02.2012, it has to be established that delay in filing the appeal was beyond the control of the appellant.

In the present case, no valid justification has been given to condone the delay in filing the present regular second appeal.

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Learned counsel for the respondents on the other hand submits that the appellant accepted the judgment and decree dated 18.02.2015 passed by the Lower Appellate Court and keeping in view the direction given by the Lower Appellate Court, a fresh order was passed by the authorities concerned on 11.03.2016, which means that judgment and decree of the Lower Appellate Court sought to be impugned in the present regular second appeal, already stood executed and complied with by the department. Learned counsel for the respondents further submits that a fresh order which was passed in pursuance to the judgment and decree dated 18.02.2015 of the Lower Appellate Court was challenged by the appellant by way of filing a CWP-14663-2017, which writ petition was withdrawn, which shows that it was only when appellant remained unsuccessful in challenging the fresh order, he decided to file the present regular second appeal.

The said fact, stated by the learned counsel for the respondents has not been rebutted by the learned counsel for the appellant rather the same has been conceded.

Keeping in view the above, once, the judgment and decree of the Lower Appellate Court dated 18.02.2015 already stood complied with and a fresh order has already been passed, which order was unsuccessfully challenged by the appellants by way of filing a CWP-14663-2017 hence, thereafter, filing the present regular second appeal with application seeking condonation of delay is to unsettle the crystallized rights, which vest with the respondents.

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In the facts and circumstances of the present case, once the rights of the parties have already been crystallized, keeping in the view the judgment and decree dated 18.02.2015 of the Lower Appellate Court and the said judgment has already been complied with, no ground for condoning the delay, as being prayed in the present application is made out.

At this stage, learned counsel for the appellant submits that the appellant be given liberty to avail an appropriate remedy against the fresh order passed by the respondent-department.

This Court is not required to pass any order on the said aspect as in case any remedy exists with the applicant-appellant to challenge the fresh order in pursuance to the judgment and decree dated 18.02.2015 of the Lower Appellate Court, the applicant-appellant is free to avail the said remedy.

Keeping in view the above, present application seeking condonation of delay of 871 days in filing the accompanying appeal is dismissed.

As the appeal is time barred, the present appeal is not required to be decided on merits hence, the present regular second appeal along with the miscellaneous applications if any, is dismissed.

March 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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