

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(117)

CR No. 5384 of 2022

Date of Decision : 02.02.2023

Excise and Taxation Officer-cum-Assessing Authority and another

...Petitioners

Versus

M/s Adhinath Trader and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Midha, Additional Advocate General, Haryana
for the petitioners.

Harsimran Singh Sethi J. (Oral)

In the present civil revision petition, the challenge is to the order dated 05.11.2019 (Annexure P-1) passed by the trial court as well as order dated 04.03.2021 (Annexure P-3) by the lower appellate court by which, the appeal filed by the petitioners-defendants was rejected being time barred.

It may be noticed here that the respondents-plaintiffs filed a suit for declaration to the effect that the demand letter dated 28.06.2016 and the attachment order dated 22.07.2016 issued by the petitioners-defendants be declared null and void. After appreciating the evidence, which had come on record, the trial court vide judgment and decree dated 05.11.2019 (Annexure P-1) decreed the suit with cost and further held that the respondents-plaintiffs are entitled to recover a sum of ₹1 lac from the petitioners-defendants along with interest @ 9% per annum. After the

judgment and decree of the trial court, no appeal was preferred by the petitioners-defendants within the time frame as provided under the law but thereafter an appeal was filed by the petitioners-defendants after a delay along with an application for condonation of delay. The lower appellate court vide judgment dated 04.03.2021 (Annexure P-3) declined prayer of the petitioners-defendants to condone the delay on the ground that the same has not been explained with valid justification keeping in view the requirements envisaged by the Hon'ble Supreme Court of India while deciding Civil Appeal No. 2474-2475 of 2012 titled as *Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another*, on 24.02.2012,

- “2. *The following issues arise for consideration:*
- a) Whether the Office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court. Depending on the outcome of the above issue, other issues to be considered are:*
 - b) Whether the impugned advertisement inserted in the Reader's Digest issue of December, 2005 is in conformity with the requirement of law.*
 - c) Whether the Department has made out a case for interference under Article 136 of the Constitution of India to reopen concurrent findings of fact rendered by the High Court.*

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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 bona fide 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 acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.*
14. *In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.”*

After the said order was passed in March, 2021, again no action was taken by the petitioners-defendants and now the present civil revision petition has been filed after one and half year of the order dated 04.03.2021 passed by the lower appellate court.

On being asked, as to on what ground the department was

claiming the condonation of delay by the lower appellate court, learned counsel for the petitioners-defendants has not been able to apprise this court any valid justification, which was placed before the lower appellate court for consideration in support of their application. Even before this Court also, no fact or the document has been placed on record so as to show that the delay in filing the appeal against the judgment and decree of the trial court dated 05.11.2019 (Annexure P-1) was bona fide or the facts and circumstances were such that it was beyond their control to file the appeal within the limitation period provided.

In the absence of any record being produced before the lower appellate court or even before this court in the present proceedings, it cannot be said that the order passed by the lower appellate court dated 04.03.2021 (Annexure P-3) rejecting the application seeking condonation of delay of 250 days is bad either on facts or law.

Recently also, the Hon'ble Supreme Court of India in Civil Appeal No. 1669 of 2020 titled as ***Sabarmati Gas Limited Vs. Shah Alloys Limited***, decided on 04.01.2023 held that the delay, which was unexplained, cannot be condoned unless and until the sufficient cause is presented before the court which entitles the applicant for condonation of delay. The relevant paragraph of the judgment is as under :-

“24. When the limitation period for initiating CIRP under [Section 9](#), IBC is to be reckoned from the date of default, as opposed to the date of commencement of IBC and the period prescribed therefor, is three years as provided by [Section 137](#) of the Limitation Act, 1963 and the same would commence from the date of default and is extendable only by application of [Section 5](#) of the Limitation Act, 1963 it is incumbent on the

Adjudicating Authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation.

25. As relates [Section 5](#) of the Limitation Act showing 'sufficient cause' is the only criterion for condoning delay. 'Sufficient Cause' is the cause for which a party could not be blamed. We have already taken note of the legal bar for initiation of proceedings against an industrial company by virtue of [Section 22 \(1\)](#), SICA and obviously, when a party was thus legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on application permission therefor was not given the period of suspension of legal proceedings is excludable in computing the period of limitation for the enforcement of such right in terms of [Section 22\(5\)](#), SICA. In the absence of provisions for exclusion of such period in respect of an application under [Section 9](#), IBC, despite the combined reading of [Section 238A](#), IBC and the provisions under the [Limitation Act](#) what is legally available to such a party is to assign the same as a sufficient cause for condoning the delay under [Section 5](#) of the Limitation Act. In such eventuality, in accordance with the factual position obtained in any particular case viz., the period of delay and the period covered by suspension of right under [Section 22 \(1\)](#), SICA etc., the question of condonation of delay has to be considered lest it will result in injustice as the party was statutorily prevented from initiating action against the industrial company concerned. The first question formulated hereinbefore is accordingly answered."

Keeping in view the above, as no justifiable fact has been brought to the notice of this court even in the present proceedings so as to claim the condonation of delay in filing the appeal before the lower

appellate court, no ground is made out for interference by this Court in the present proceedings.

Dismissed.

February 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No