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

LPA No.123 of 2018 (O&M)
Date of decision:13.03.2023

STATE OF HARYANA AND OTHERS

... Appellants

Versus

SH. RAMESHWAR KAUSHIK

... Respondent

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

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Vikas Chatrath, Advocate with
Mr. B.P.S. Thakur, Advocate
Mr. Abhishek Singla, Advocate and
Ms. Tanya Seghal, Advocate for the respondent.

M.S. RAMACHANDRA RAO, J. (ORAL)
CM-268-LPA-2018 & LPA No.123 of 2018

This is an application filed by the State of Haryana and others-appellants seeking condonation of delay of 387 days in filing the accompanying appeal challenging a clarification issued by the learned Single Judge on 20.10.2016 in CM-6315-CWP-2014 in CWP-8058-2009 of the order passed by him on 25.02.2010.

In the application filed for condonation of delay, it is contended that the appellants had considered the matter at different levels and felt that the relief granted by the learned Single Judge in C-6 3 1 5- CWP-2 0 1 4 was not legally tenable and then decided to file LPA against the order dated 20.10.2016 passed by the learned Single Judge. According to the application, the Additional Chief

Secretary to Government of Haryana, Education Department, requested the office of the L.R., Haryana to issue sanction under Para 20.4(c) of the Law of the Department Manual on 02.11.2017 and then the LPA came to be filed with a delay of 387 days.

There is no explanation as to what transpired after the order of the learned Single Judge was passed on 20.10.2016 till 18.01.2018 except what is indicated in the application. Why it should have taken such a long time for the appellants to take a decision, whether or not to prefer an appeal against the order of the learned Single Judge passed on 20.10.2016, is not explained.

Learned counsel for the appellants however contended that an appeal is a matter of right and that any delay in filing the appeal should be condoned by taking a sympathetic view of the matter.

Learned counsel for the appellants has placed reliance on the decision of the Supreme Court in *The Commissioner, Mysore Urban Development Authority Vs. S.S. Sarvesh*¹.

In that case the respondent had filed a Civil Suit before the Principal Senior Civil Judge and Small Causes Court, Mysuru for declaration of his title and permanent injunction in relation to certain immovable property. The appellant, on being served, filed a written statement and both parties adduced their evidence, and thereafter a judgment was pronounced on 20.03.2012 by the trial Court decreeing the suit.

The appellant then filed a first appeal under Section 96 of CPC, 1908 in the Court of the Principal District and Sessions Judge, Maysuru.

¹ 2019(2) Scale 475

When the appeal was listed for hearing on 25.04.2014, the counsel for the appellant did not appear and the Appellate Court dismissed the appeal in default.

The appellants then filed an application for recall of the order dated 25.04.2014 and sought restoration of their appeal for its hearing on merits but the said application was dismissed on 29.06.2016.

The appellants then approached the High Court under Article 227 of the Constitution of India but the said Writ Petition was also dismissed.

The appellants then approached the Supreme Court.

The Supreme Court held that the order of refusal to readmit the appeal passed by the Appellate Court under Order 41, Rule 19 of CPC was expressly made appealable under Order 43, Rule 1(t) of the CPC to the High Court and that the said remedy ought to have been availed of by the appellant and an application under Article 227 of the Constitution of India ought not to have been filed by it.

It further observed that even if there was such an error on the part of the appellant, the High Court should have converted the application filed under Article 227 into an appeal under Order 43, Rule 1(t) of the Code or permitted the appellant-Authority to withdraw the Writ Petition with liberty to file an appeal under Order 43, Rule 1(t) of the CPC in its discretion.

In that context the Supreme Court observed that a first appeal is a valuable right of the appellant and the appellant was thus entitled for an opportunity to prosecute the appeal on merits; and if its Advocate did not appear, whatever may be the reason, the Court could have imposed some costs on them for restoration of the appeal and compensate the respondent/plaintiff instead of depriving the appellant of their valuable right to prosecute the appeal on merits.

It then imposed cost of Rs.10,000/- on the appellant to be paid to the respondent/plaintiff and restored the appeal to file before the Principal of District and Sessions Judge, Mysuru and directed it to be re-heard.

The said decision has no application to the instant case because we are not dealing with the case of a proceeding being dismissed for non-prosecution.

This is a case where, though an appeal is provided under the Letter Patent, it was filed with considerable period of delay. Unless there is a reasonable and acceptable explanation for the delay, this Court is not bound to condone the same.

In ***Office of the Chief Post Master General*** the Supreme Court has held no doubt some laxity is given for Government's inefficiency but with the technological advancement now the Judicial view prevalent earlier when such facilities were not available has been overtaken. It held:

"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 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 acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

The said decision in the ***Office of the Chief Post Master General and Others*** has been recently reiterated in ***The State of Odisha and Others Vs. Sunanda Mahakuda***². In para 6 of the said judgment, it is observed as under:-

“The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits.”

Thus the State cannot be allowed to proceed on a presumption that there is a chance of the delay being condoned in every case if the State Government is able to say something on merits.

2 2021(11) SCC 506

Similar view has been taken by this Court in LPA-1828-2019 titled State of Haryana & Others Vs. Vikas Kumar Gupta and Another decided on 28.02.2023 by refusing to condone delay of 707 days in filing a Letter Patent Appeal.

In our opinion in the instant case also, no sufficient cause has been shown for condoning the delay of 378 days in filing the appeal and a totally negligent and relaxed attitude has been adopted by the appellants in pursuing the remedy of appeal under the Letter Patent.

Therefore, we do not find any merit in the application for condonation of delay, it is accordingly dismissed.

Consequently, the appeal is also dismissed.

All pending CMs, if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

13.03.2023
Sonia

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