

2024:PHHC:154971



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

233

CRM-5057 & 5058 -2018 in/and
CRM-A-316-MA-2018
DECIDED ON: 18.07.2024

DHIR SINGH

.....APPLICANT/APPELLANT

VERSUS

M/S SAR INVESTMENTS AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashok Jindal, Advocate for the applicant/appellant.

Mr. Munish Kumar Garg, Advocate and
Mr. Tanuj Goyal Tohana, Advocate
for respondent No.1.

Mr. Shubham Thakur, Advocate for Mr. Alok Mittal, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. This appeal has been preferred by state, along with an application under Section 5 of the Limitation Act seeking condonation of delay of 1256 days in filing the appeal, against the judgment dated 09.06.2014, passed by Chief Judicial Magistrate, Gurgaon, whereby an application under Section 22 read with Section 23 of Punjab Shops and Commercial Establishment Act for direction and appropriate action has been dismissed for non-prosecution.

2. Learned counsel for the applicant/appellant submits that the aforementioned application was dismissed vide impugned order dated 09.06.2014 due to non-appearance of the applicant/appellant on account of the fact that a

wrong date i.e. 11.06.2014 was noted down by the applicant/appellant. The non-appearance was neither intentionally nor deliberate.

3. Learned counsel for the respondents has contended that there is no provision of law for restoration of the application. The afore-said application was rightly dismissed for non-appearance and the applicant/appellant as well as his counsel did not appear intentionally as he does not want to pursue the case.

3. Having heard learned counsel for the applicant/appellant at length and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the impugned order dated 09.06.2014 passed by Chief Judicial Magistrate, Gurgaon.

4. Learned counsel for the applicant/appellant has given no convincing explanation and sufficient cause for condoning the delay of 1256 days in filing the instant appeal, which according to him has occurred under the mistaken impression of legal provisions, pursuing a wrong remedy but with due diligence and good faith.

5. It is well settled law that if anyone want to file any appeal against the order of the Court should approach within a reasonable time and not on their whims and fancies has been reiterated in the case of **State of Bihar & Others vs. Deo Kumar Singh & Others, SLP (Civil) Diary No.13348 of 2019, decided on 09.05.2019**, wherein it has been held that the Government Authorities cannot approach the Court as and when they please.

6. It is to be borne in mind that the power given to the Court under [Section 5](#) of the Limitation Act to condone the delay has to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood and delay in filing an appeal ought not to

be excused unless there are special circumstances. While dealing with an application under Section 5 of the Limitations Act, the Courts are always influenced by the considerations whether the extensions of the period of the limitation is likely to affect the rights which have come to vest in the opposite party with a efflux of time. When the time for filing an appeal has once passed, a very valuable right stands accrued in favour of the other party.

7. The Apex court as far back in 1962 in the case of ***Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd A.I.R. 1962 SC 361*** has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

8. Keeping in view the discussions made hereinabove and backdrop of facts and circumstances, no ground, much less sufficient and cogent, has been made out by the applicant/appellant for the purpose of condonation of delay of 1256 days in filing the appeal.

9. In view of above the application seeking condonation of delay in filing the application seeking leave to appeal as well as leave to appeal stands dismissed.

10. Pending criminal misc. Application, if any shall also disposed of.

(SANDEEP MOUDGIL)
JUDGE

18.07.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No