

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3043 of 2019 (O&M)

Date of Order:15.03.2024

State of Haryana and others

.Petitioner

Versus

Ashok Kumar Yadav

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaspal Singh Pannu, AAG, Haryana.

Mr. Kartikey Choudhary, Advocate
for Mr. Samrat Malik, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. Through this revision petition, the State of Haryana and its officials assail the correctness of the first appellate court's order to condone the delay of 175 days in filing the first appeal.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed
3. The respondent filed a civil suit for the grant of decree of declaration to the effect that the order dismissing him from service as a measure of major punishment is wrong, illegal and arbitrary.
4. The civil court partly decreed the suit and directed the authorities to pass any other order except the order of dismissal from service.
5. The first appeal was filed to challenge the aforesaid judgment along with an application for condonation of delay on the following grounds:-

*“1. That the civil suit of the plaintiff has been decided on
12.12.2017 by the Hon'ble court of Sh. Ramawatar*

Pareek, Additional Civil Judge (Sr. Divn.), Kanian.

2. *That concerned assistant District Attorney, Kanina Court has sent the comments of the present civil suit to the Legal Remembrancer and Administrative Secretary to Government Haryana, Law and Administrative Secretary to Government, Haryana, Law and Legislative Department, Chandigarh. The above said authority vide his office memo No.63/17/Co. 18(67) 2018 dated 22.5.2018 has directed to the District Attorney that appeal in the present case be filed in the Hon'ble First appellate Court.*
3. *That today on 4.7.2018 appeal has been prepared and is being filed after a delay of 175 days which was caused on account of obtaining sanction from the Government as well as from the concerned defendants.”*

6. The First Appellate Court has refused to condone the delay on the ground that the State has failed to disclose as to when Assistant District Attorney, Kanina Court, sent the comments to the Legal Remembrancer and therefore it would not be appropriate to give blanket licence to the State to file cases whenever it pleases.

7. The correctness of the aforesaid order has been challenged in this revision petition.

8. It may be noted here that the first appeal is an important enabling right available to the party to the suit to challenge the correctness and legality of the judgment and decree passed by the trial court. The First Appellate Court is the last court of fact and law both. It is expected that the First Appellate Court will re-appreciate the evidence and decide the appeals after thoroughly examining the facts available on the record and the evidence led by the parties while applying the law. Hence, the efforts should

be to decide the appeals on merits rather than on technicalities or defaults. If the appeals are permitted to be decided for default or technical reasons, the justice may suffer. Hence, the approach of the court should be pragmatic and holistic. The State Government and the Public Sector Undertakings are required to depend upon its officers and officials . Some time even those officials collude with the litigants. In these circumstances, the court is expected to be liberal in considering the request of the State or instrumentalities to condone the delay. In this case, the First Appellate Court has taken a very hyper technical view.

9. In the considered view of the court, it would be appropriate to condone the delay in filing the appeal in the facts and circumstances of the present case. Hence, the revision petition is allowed. The impugned order passed by the Additional District Judge, on 01.02.2019, is set aside. The first appeal filed by the State is restored to its original number with direction to the First Appellate Court to decide the appeal within a period of next 9 months, from today.

10. The parties through their counsel are directed to appear before the First Appellate Court, on 15.04.2024.

11. All the pending miscellaneous applications, if any, are also disposed of.

March 15, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO