

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

Neutral Citation No. 2024:PHHC:055762-DB

(102)

**CM-4214-C-2024 in/and
RSA-2233-2009 (O&M)
Decided on : 24.04.2024**

Divisional Forest Officer and others

.....Appellant(s)

Versus

Gram Panchayat Haveli

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present:- Mr. Deepak Balyan, Addl.AG, Haryana
for the applicant/appellant.

Mr. R.S. Mamli, Advocate for the respondent.

G.S. Sandhawalia, Acting Chief Justice (Oral)

With the consent of the counsel for the parties, main appeal itself is taken on board for hearing.

2. Present regular second appeal is directed against the judgment of the Courts below at Jagadhri, whereby the suit for permanent injunction filed by the plaintiff/respondent was allowed on the ground on 05.06.2006 that the trees had been planted on the land which belonged to the Gram Panchayat-plaintiff and, therefore, the defendants/appellants could not as such have any right over the trees and the Civil Judge (Sr.Division) restrained the defendants from interfering in the work of cutting and removing the trees from the land owned and possessed by the plaintiff. The land in question measured 37 kanals 7 marlas and was in ownership and possession of the Gram Panchayat and in the column of nature of land word '*Gair Mumkin in Khola and Band*' has been mentioned.

3. The stance of the appellants was that they had planted these trees being the Forest Department about 20 years back and they were looking after them. There were 525 trees of Eucalyptus and 27 trees of Kiker (Babool) and in total there were 552 trees.

4. Resultantly, the suit had been decreed on 05.06.2006 on the ground that the trees were standing on the land belonged to the Gram Panchayat. The appeal filed before the Additional District Judge was dismissed on the ground of delay of 148 days on 02.09.2008 by coming to the conclusion that the pleadings were vague and it was nowhere mentioned as to when the case was sent to the Legal Remembrancer and Secretary to the Government of Haryana at the first instance for seeking approval for filing the appeal. The plea that there was a notification dated 24.05.1982 whereby the trees in question had been declared as protected forest was brushed under the carpet by noticing the fact that earlier there was a legal opinion by the Legal Remembrancer and Secretary to Government of Haryana that the present case was not fit for filing the appeal, but later on keeping in view the findings of the Apex Court, the appellant had decided that the present case was fit for filing the appeal. Thus, the question as such whether the provisions of Forest (Conservation) Act, 1980 would apply was subject matter of consideration before the learned Appellate Court.

5. The appeal was tagged to be heard with RSA-494-2009 titled *Gajjan Singh & another Vs. State of Haryana & others*, wherein the substantial questions of law had been framed whether the trees planted by the State on the land of the plaintiffs could be permitted to be felled in terms of Section 35 of the (Act, 1927 and Section 2 of the Forest Conservation) Act, 1980. The factum that the Lower Appellate Court had never decided the issue

on merits apparently escaped the notice of the Learned Single Judge while framing the substantial questions of law and tagging the present appeal along with RSA-494-2009. In such circumstances, we are of the considered opinion that we need not answer the reference in the peculiar facts and circumstances as we do not have the benefit of the judgment of the Lower Appellate Court which is the First Appellate Court on facts and which would clarify the status of the evidence which had been led by the parties qua the resolutions passed by the Gram Panchayat and the nature of land which is apparently in the form of common usage, as such. The aspect of how much of the amount was spent in planting of the trees and maintaining them over the years is a factual matrix which has to be thrashed out.

6. Unfortunately, the application was dismissed on the ground that the reasoning given in the application was also vague as on an earlier occasion the case had been declared unfit for filing the appeal. The facts as such not having been specifically averred in the affidavit was another reason which prevailed with the lower Appellate Court to dismiss the application for condonation of delay while placing reliance upon the judgment of the Apex Court in **Ram Chand Vs. Raj Ranu, 1999 (3) Civil Court Cases 319** where there was a delay of 123 days. Similarly, the judgment of the Andhra Pradesh High Court in **Superintending Engineer, N.S. Canals Circle, Pellur, Ongole and another Vs. Idamakanti Chinna Koti Reddy, 1999 (Supplement) Civil Court Cases 455**, apart from the judgment of this Court in **Kulwant Kaur Vs. State of Punjab, 1999(2) Civil Court Cases 663** and **Sukhwinder Singh and others Vs. Surinder Pal and others, 1995(2) Civil Court Cases 673** were taken into consideration to dismiss the appeal.

7. The question of law which would arise for consideration is that whether the lower Appellate Court was justified in dismissing the application for condonation of delay or not on 02.04.2008 in the peculiar facts and circumstances?

8. We are of the considered opinion that the said question is to be answered in favour of the appellant/State. We have perused the application, which was filed before the lower Appellate Court from the record, wherein it was mentioned that delay was of approximately 5 months and it was also specifically averred that there was a legal opinion that it was not a fit case for filing the appeal and, therefore, draft appeal could not be prepared. Keeping in view the findings of the Apex Court, the draft of the appeal had been got prepared and then the appeal had been filed and, therefore, the delay was liable to be condoned and irreparable loss and injury would be suffered, if the delay was not condoned. The application was duly verified by the Divisional Forest Officer.

9. Application was contested by filing reply that the State had got no right to file the appeal after the lapse of 5 months and the citation of the Apex Court as mentioned in the application was well within their knowledge. The delay was not caused on the ground of reasons beyond the control and it was willful or deliberate and, therefore, same was not liable to be condoned.

10. The law has been settled on the said issue. The Apex Court in the judgment of **Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, (1987) 2 SCC 107** has held that each and every day's delay is not be explained. In the recent judgment of the Apex Court in **University of Delhi Vs. Union of India and others, (2020) 13 SCC 745**, the earlier judgments of the Apex Court including **Postmaster General & Ors. vs.**

Living Media India Limited & Another, (1992) 3 SCC 563 were taken into consideration. The Apex Court had declined to condone the delay of 916 days, wherein the dispute was regarding the construction of University Metro Station and the Change of Land Use. The Division Bench of the Delhi High Court had dismissed the appeal without considering the merits of the appeal. The matter was taken to the Apex Court by the appellant.

11. Resultantly, the Apex Court has held that a liberal approach has to be taken in the matter of condonation of delay and the sufficient cause to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation. The delay in the said case had occurred on the ground that the Vice-Chancellor was not available and due to the appointment of the new Vice-Chancellor there was delay in filing the appeal. Resultantly, it was held that the Division Bench was justified in dismissing the application, however, where public interests are involved and the nature of proceedings also have to be kept in mind and the ultimate consideration is that even handed justice is rendered to the parties.

12. Recently in **Raheem Shah & another Vs. Govind Singh & others, 2023 (4) PLR 352**, delay of 52 days in filing the appeal had been rejected by the Lower Appellate Court which order was upheld by the High Court while dismissing the appeal. Resultantly, the Apex Court held that the approach should be liberal and justice oriented rather than iron-cast technical approach, while allowing the SLP and remanding the matter to the Lower Appellate Court.

13. Thus, keeping in view the above and also the judgment of the Apex Court in **State of Nagaland Vs. Lipok AO and others, (2005) 3 SCC 752**, wherein it has been held that the Government as such always works with

hands tied and though there is no separate consideration if an application is filed by the State, but bureaucratic dealing as such would be a ground for delay. The relevant observations of the Apex Court read as under:

“16. In [G. Ramegowda, Major v. Spl. Land Acquisition Officer](#) (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of [Section 5](#), it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach

is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

17. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice- oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

14. In the present case as noticed above, the question as to whether trees planted by the Forest Department would be covered by the concerned notification and the area being declared as Protected Forest would have been subject matter of consideration, which should have been delved upon by the lower Appellate Court, rather than dismissing the application on the technical ground of delay.

15. Accordingly, we answer the question framed above in favour of the appellant-State and hold that the lower Appellate Court was not justified in dismissing the application for condonation of delay. We accordingly, allow the appeal by condoning the delay and matter is remanded to the lower Appellate Court, Yamunanagar to decide the same on merits.

16. Needless to say that the interim order passed on 10.09.2009 that trees would not be felled by any party while noticing the observations of the Apex Court in **T.N. Godavaraman Thirumulkpad Vs. Union of India and others, (1997) 2 SCC 267** shall continue to remain in force, till the pendency of the appeal before the lower Appellate Court.

17. The appeal stands allowed, accordingly. All pending civil miscellaneous applications also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

24.04.2024

Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes