



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2982-2021 (O&M)
Date of Decision:-24.05.2024

Smt. Sunandha Dutta @ Veena Dutta

.... Petitioner

Versus

Kumari Shanti Dutta Memorial & Educational Trust through its President
and Ors.

....Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :- Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate with
Mr. Vishal Pundir, Advocate
for the petitioner.

Mr. Pritam Singh Saini, Advocate with
Ms. Vamika Johar, Advocate
for respondents No.1 to 5, 8 and 9.

Respondent No.6 (died).

Mr. Sarvjit Singh Khurana, Advocate
for respondent No.7.

Mr. Kewal Krishan, Advocate for
Mr. S.K. Mahajan, Advocate
for respondent No.11.

Service of proforma respondent No.16 dispensed with
vide order dated 23.03.2022.

None for respondents No.12 to 15 (despite service).

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**RITU TAGORE, J.**

1. Challenge in this revision-petition is to the order dated 06.10.2021 (Annexure P-6), whereby learned Additional District Judge, Rewari condoned the delay of 81 days by respondents No.1 to 9, (the appellants- plaintiffs) in filing the First Appeal against judgment and decree dated 29.03.2017 (Annexure P-1).

2. Learned counsel for the petitioner (defendant No.2 before the learned trial Court) submits that respondents No.1 to 9 (plaintiffs before the learned trial Court), instituted a suit for declaration and permanent injunction, against petitioner and proforma respondents No.10 to 16 (defendants before learned trial Court), with material averments that Kumari Shanti Dutta Memorial and Educational Trust (plaintiff No.1 before the learned trial Court) was set up by late Chandra Dutta, an educationalist, for providing and promoting educational facilities for public at large. A trust deed dated 16.03.2000 was executed and registered for the above purpose. Plaintiffs are founder members of the Trust. The Trust has several bank accounts and properties including Shishu Shala School. The management of the school is with the Trust. The plaintiff, by raising general pleas in the plaint, averred that petitioner and Brig. R.C. Dutta (since deceased, represented by LRs), respondent No.10, have no right and interest in the management and affairs of the Shishu Shala School, which runs on Plot No.318 Model Town, Rewari, and they be restrained from managing and



running the affairs of the school and its funds, and other bank accounts, belonging to Trust (plaintiff No.1).

3. Learned counsel states that after a strong contest from the petitioner and other defendants, the learned trial Court dismissed the suit vide judgment and decree dated 29.03.2017 (Annexure P-1). It is urged by learned counsel that respondents No.1 to 9 filed First Appeal (Annexure P-3) after delay of 81 days, accompanied by an application (Annexure P-2) under Section 5 of the Limitation Act, 1963, setting up a false and concocted pleas for the delay. The petitioner and others filed the replies (Annexures P-4 & P-5), and opposed the application tooth and nail, challenging the maintainability of the application and false grounds taken to explain the delay and its condonation, with a prayer for its dismissal.

4. It is urged by learned counsel that learned Appellate Court, committed a material illegality in condoning the delay, which is contrary to the law laid down in various judicial pronouncements that places heavy onus upon the petitioner to demonstrate the 'sufficient cause' that prevented him/her from filing the appeal within the statutory period. Learned counsel contends that explanation offered by the appellants-respondents No.1 to 9 for the delay in filing the appeal-namely, that after the decision of the suit, petitioner and others assured the trustees/respondents No. 1 to 9 that Shishu Shala school would not be closed, and relying on their assurance, the appellants did not file the appeal within the statutory period of limitation, is inherently false and frivolous plea. Learned counsel for the petitioner urges



that learned Appellate Court failed to notice the vagueness in the explanation given, which *dehors* the basic element of 'sufficient cause'.

5. Learned counsel also urges that appellants-respondents No. 1 to 9 deliberately mentioned a delay of 64 days in place of 81 days in their application for condonation of delay, suggesting *mala-fides* on their part. Addressing further in this regard, it is urged that learned Appellate Court, despite observing that appellants failed to establish the 'sufficient cause' in filing the appeal beyond the limitation period, still condoned the delay against the tenets of law of limitation as established by binding judicial precedents. Based on the above summation, an appeal is made to set aside the impugned order. In support of his contentions, learned counsel for the petitioner placed relied upon **Sheo Raj Singh (Deceased) Through LRs. & Ors. vs. Union of India and Anr. 2023 AIR (SC) 5109.**

6. On the contrary, learned counsel for respondents No. 1 to 9, argued, in support of the impugned order, stating that learned Appellate Court has rightly allowed the application and condoned the delay, as general rule of law prompt that judicial verdicts be pronounced on the contest of matters by permitting the parties to put forth their respective averments, rather than scuttling the rights of the parties on technical rigidity. It is stated that reasons for the delay put forth by the respondents members of the Trust were genuine, driven solely by the goal of ensuring the continuous running of the school for the benefit of the public at large, without any personal interest or grudge.



7. Learned counsel further urges that the learned Appellate Court rightly condoned the delay, being First Court of Appeal, where parties should be given a fair opportunity to pursue their cases. It is stated that order under challenged was judiciously passed and should not be interfered with. Based on these arguments, a prayer is made to dismiss the petition being meritless. In support of these contentions, learned counsel for the respondents relied upon judicial pronouncements titled as **Rudaram and Ors. vs. Saroj Devi and Ors., 2020(4) R.C.R.(Civil) 177; Krishan Pal and Ors. vs. The Commissioner, Rohtak Division, Rohtak and Ors. 2021(1) CivCC 423; Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others 2013(12) SCC 649; Indra Nand Mishra & Ors. vs. State of Bihar & Ors. 2000(5) SC 390; Haryana State Agriculture Marketing Board and Another vs. Sumer Singh and Anr. CR-3036-2021 date of decision 17.02.2022; and Mrs. Saroj and Others vs. Sh. Baljeet Singh and another 2010(3) R.C.R. (Civil) 929.**

8. I have given careful thought to the submissions of the learned counsel for the parties and find no reason to differ with the judicial discretion exercised by the learned First Appellate Court for the reasons that condonation of delay is a matter of discretion of the Court. Section 5 of Limitation, Act 1963 provides for the acceptability of the explanation for the delay, not the length of delay. Sometimes delay of a short period may be uncondonable due to want of acceptable explanation, whereas in certain other cause, delay of long period can be condoned on a satisfactory explanation. Whence the Court accepts the explanation as sufficient, as a



result of positive exercise of discretion, normally it should not be disturbed, much-less in the revisional jurisdiction, unless exercise of discretion appears on wholly untenable grounds, or arbitrary or perverse. But it is a different matter, when the First Appellate Court refuses to consider the delay.

9. The law of limitation is founded on public policy. Rules of limitation are not meant to destroy the rights of the parties, they are meant to see that parties do not resort to delay tactics, but seek their remedy promptly. The primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The idea to limit the time is to redress the remedy promptly. However, there is no presumption that delay in approaching the Court is always deliberate. Therefore, in various judicial decisions, it has been held that 'sufficient cause' appearing in Section 5 of Limitation Act 1963, should be construed in 'liberal sense', so as to advance the substantial justice. If the explanation rendered by a suitor approaching the Court does not smack of *mala-fides* or it is not put forth as a part of dilatory strategy, the Court must show utmost consideration to the suitor. If there is some reasonable ground to suspect that delay was occasioned by the party deliberately to gain time or smack of *mala-fides*, the Court should lean against acceptance of such explanation.

10. In this case, Learned Appellate Court rejected the explanation tendered by respondents No. 1 to 9 for the delay in filing the appeal, citing absence of particulars regarding when, where and by whom such an assurance was given that the school would not be closed and sold. However, learned Appellate Court observed that respondent No 1 to 9-appellants, who



litigated the matter extensively and vigorously had no *mala-fides* on their part in presenting the appeal beyond the period of limitation, should be given an opportunity to contest matter on its merits. Learned Appellate Court also observed that even if present respondent No.1 to 9 were negligent, they should not be thrown out, on their first appeal without hearing them on merits.

11. This Court is of the view that a delay of 81 days cannot be considered to be inordinate delay, when matter relates to first appeal, particularly, when there appears no *mala-fides* on the part of the present respondents No 1 to 9 in filing the appeal beyond the period of limitation. It is a case, where respondents No.1 to 9 alleging them as members of the Trust, are fighting for the smooth working of the school Shishu Shala, catering to the educational needs of the public at large. Regardless whether present respondents No. 1 to 9, have good ground to plead their case or not, they deserve an opportunity to espouse for their pleaded cause. The first appeal is undoubtedly an important right of the litigating parties, and they should not be condemned unheard on technical rigidity. Further, this Court is of the view that when substantial justice and technical consideration are pitted against each other, the former should prevail.

12. Now, it would be apt to go through the judicial precedent referred to by the learned counsel for the petitioner. In **Sheo Raj Singh (supra)**, there was delay of 479 days in filing the appeal from the decision of the Reference Court, in a land acquisition matter. The explanation for the delay in filing the appeal taken by the department was the institutional



routeing of appeal, its preparation and thereafter is presentation. While relying on several judicial precedents, Hon’ble Apex Court observed that discretion exercised in given case was reasonable. On the other hand, respondents No.1 to 9, placed reliance on **Rudaram and Ors. & Haryana State Agriculture Marketing Board and Another (supra)**, in both the cases, it was observed that when matter relates to First appeal, a fair and reasonable chance should be given to pursue the remedy. In **Mrs. Saroj and Others (supra)** Coordinate bench condoned the delay of 447 days, holding that if case is good on merits, this constitutes a sufficient cause for condonation of delay. In **Krishan Pal and Ors. (supra)** illiteracy of village appellants constituted good cause for condoning the delay of 454 days. In , **Indra Nand Mishra & Ors. (supra)**, a delay of 679 was condoned by observing that technicalities of law cannot prevent the courts to do substantial justice.

13. For the reasons stated above, this Court is not inclined to interfere in the judicious discretion exercised by the learned First Appellate Court. Ex-consequenti, this revision petition is hereby dismissed.

14. Pending miscellaneous application(s), if any, are also disposed of accordingly.

24.05.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No