

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223-2

Decided on :29.04.2024

CM-1849-C-2018 in/and
RSA-743-2018 (O&M)

THE STATE OF HARYANA THROUGH COLLECTOR, SIRSA,
DISTRICT SIRSA AND ORS . . .Appellants

Versus

BALWAN SINGH . . . Respondent

CM-1854-2018 in/and
RSA-745-2018 (O&M)

THE STATE OF HARYANA AND ORS . . .Appellants
Versus

SURJEET KUMAR . . . Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Ms. Vibha Tewari, AAG, Haryana.

Mr. B. S. Mittal, Advocate for the respondents.

HARSIMRAN SINGH SETHI , J. (Oral)

**CM-1849-C-2018 &
CM-1854-C-2018**

The prayer in the present applications is for condonation of delay of 335 days in filing the **RSA-743-2018** & 395 days in filing the regular second appeal being **RSA-745-2018**.

The delay is sought to be condoned on the ground that the opinion was given by the District Attorney on 24.08.2017 as to whether the present appeals are fit to be filed against the order of lower Appellate Court dated 02.12.2016. Nothing has come on record that as to why, the both appeals could not still be filed for a period of five months thereafter.

It may be noticed that even the advise to file appeal has been given after the limitation period to file the appeals had already extinguished. Proposition of law with regard to the condonation of delay has already been settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2474-2475 of 2012 titled as Officer of the Chief Post Master General and others versus Living Media India Ltd and another, decided on 24.02.2012.** In paragraph 13 of the said judgment, it has been held that even the State and its instrumentalities while filing an application for condonation of delay, have to show sufficient cause for the delay, before the same can be condoned. The Hon'ble Supreme Court of India has further held that mere explanation that the delay caused was due to procedural process or was unintentional, without any supporting evidence, cannot be accepted. The relevant paragraph of the judgment is as under:-

“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.”

Recently, again the Hon'ble Supreme Court of India while deciding *SLP No.19846 of 2020 titled as Union of India versus Central Tibetan Schools Admin and others decided on 04.02.2021* has held that the condonation of delay application filed in a casual manner without cogent or plausible ground cannot be accepted. Relevant para of the judgment is as under:-

“6.The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court

which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. – (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities.”

A bare perusal of the judgment passed in **Living Media India Ltd’ s case (supra)** would show that if an appeal is not preferred within the limitation period, the applicant seeking the condonation of delay has to explain each day’s delay so as to show the court the delay was beyond the control of the applicant to file the appeal within the limitation period.

In the present appeals, not even a single cause which is sufficient to condone the delay has been brought on record.

Further, while entertaining an application seeking condonation of delay so as to entertain the appeals, the right already crystallized in the favour of other parties are to be considered. In the present appeals, the respondents have already retired from service after the decision of the lower Appellate Court. That being the factual position, a right which has already been crystallized in favour of the respondents cannot be taken away merely on the asking of the appellants so as to condone the delay of 335 days and 395 days in filing the present appeals respectively.

Further, as per the judgment passed in **Central Tibetan Schools Admin’ s case (supra)** where the appeal has been filed to complete a mere formality to save the skin of the officer, the same cannot be entertained. The

present appeal is also fits in the same category. If, the Government has taken two years time to decide as to whether the appeal is to be preferred or not and in the meanwhile the respondents have already retired and declining the benefits which have already been granted by the Courts below and that too by taking away their crystallized right, will amount to giving premium on the wrong acts of the appellants-State.

Keeping in view the facts and circumstances recorded herein above especially that the judgments impugned in the present appeals have already been executed and the respondents have already retired coupled with the fact that nothing plausible has been brought to the notice of this Court for condoning the delay, no ground is made out to condone the delay of 335 days and 395 days in filing the regular second appeals. Accordingly, the present applications are dismissed.

RSA-743-2018 & RSA-745-2018

Keeping in view the fact that the present appeals are time barred and the applications seeking condonation of delay in filing the present appeals have been dismissed by this Court herein above, the present appeals can not be entertained and the same stands dismissed being time barred.

The present regular second appeals stand dismissed being time barred.

Pending civil miscellaneous application, if any, stands disposed of.

A photocopy of this order be placed on the files of connected cases.

29.04.2024

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Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(HARSIMRAN SINGH SETHI)
JUDGE

