

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-34661-2024 (O/M)

Date of decision : 24.07.2025

Narinder Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Preetinder Singh Dhaliwal, Advocate
for the petitioners.

Mr. Harpreet Singh, AAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 19.01.2024 (Annexure P-9), passed by Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby revision petition (ROR-877-2023), filed by the petitioners, challenging sanad takseem (instrument of partition) dated 30.09.2021 (Annexure P-6), has been dismissed on the point of delay.

2. Briefly, private respondents herein sought partition of joint land measuring 71 Kanal – 3 marla, situated at village Maur, Nabha-II (as per jamabandi for the year 2004-05). The said partition proceedings culminated with the drawing of sanad takseem (instrument of partition) dated 30.09.2021 (Annexure P-6).

2.1 It appears that the petitioners challenged the partition proceedings/sanad takseem by filing a revision petition (ROR-877-2023) before learned Financial Commissioner. Alongwith the revision petition, an application under Section 5 of Limitation Act, 1963, seeking condonation of delay of 437 days in filing the revision petition was also filed, however, learned Financial Commissioner has dismissed revision petition, filed by the petitioners, vide impugned order dated 19.01.2024 (Annexure P-9) on the point of delay.

3. In the aforementioned circumstances, the petitioner has filed this writ petition before this Court for the relief(s), as noticed hereinabove.

4. Heard.

5. Before considering the case in hand, it is apposite to refer to a few judicial pronouncements as regards condonation of delay.

5.1 Hon'ble the Supreme Court in ***State of Madhya Pradesh Vs. Ramkumar Choudhary, 2025 (1) RCR (Civil) 199;*** has spelt out that a party seeking condonation of delay has to explain as to why it was unable to institute the proceedings within the period of limitation and the sufficient cause must establish that because of some event or circumstance arising before the limitation expired, it was not possible to file appeal within time. Hon'ble Supreme Court observed as under :-

“5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of

generosity and rendering substantial justice is not to cause prejudice to the opposite party.

7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day. It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before the limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: Ajit Singh Thakur Singh and Another v. State of Gujarat, AIR 1981 SC 733).

8. Accordingly, we dismiss this Special Leave Petition with costs of Rs.1,00,000/- to be deposited by the State within a period of two weeks from today with the Supreme Court Mediation Centre and file proof thereof. If the said

amount, as directed, is not deposited by the State, the Registry shall take necessary steps for recovery of the same, in accordance with law.

9. *We have deemed it necessary to impose costs to send a stern message that the States must not misuse the Supreme Court's time by filing appeals against the well-reasoned and conscious decisions rendered by the High Courts without proper grounds."*

5.2 Hon'ble the Supreme Court in ***H. Guruswamy and Ors. Vs. A. Krishnaiah since deceased by LRs, 2025 INSC 53***; has observed as under :-

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a

party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.

18. For all the foregoing reasons this appeal succeeds and is hereby allowed.

19. The impugned order passed by the High Court is set aside and that of the Trial Court dated 05.08.2014 passed in Misc. No. 223 of 2006 is hereby restored."

5.3 In the case of **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, 2014(2) JT 574**; Hon'ble Supreme Court observed as under:-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but

simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

5.4 Recently, in ***Rahul Mavai Versus Union of India and Ors***; [W.P. (C) 17440/2024, decided on 18.12.2024]; a Division of Delhi High Court observed as under:-

“4. We also disapprove the unwholesome practice of seeking to explain away inordinate delay and laches on approaching the Court on the mere ground that the Counsel who had been dealing with, or entrusted, the matter, was tardy, negligent, or indolent. At times, this assertion is sought to be supported by an assertion that the litigant has approached the Bar Council concerned against the counsel.

5. We emphatically disapprove of this practice of shifting, to the shoulders of the Counsel, the negligence in approaching the Court. It is easy, in such circumstances, to file a complaint before the Bar Council and seek to explain away the delay. We deprecate this. A litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

6. That said, if, in fact, the Counsel has been negligent, the litigant would have to place, on record, material to indicate that she, or he, has been in touch with the Counsel during the entire period of delay, and that the Counsel has been misleading her, or him. This material must be acceptable, and convincing. The Court has to be satisfied that, in fact, the Counsel has been misleading the client, and that this explains the entire period of delay in approaching the Court. Of course, if the Court is so satisfied, and an innocent litigant has been led up the garden path by an unscrupulous Counsel, the court would not allow injustice to be done, and would, in an appropriate case, condone the delay...”

6. In the instant case, the petitioners challenged the partition proceedings/sanad takseem dated 30.09.2021 (Annexure P-6) by filing a revision petition (ROR-877-2023) alongwith an application seeking condonation of delay of 437 days. The contents of application seeking condonation of delay read as under :-

“1. That the petitioner is filing the accompanying petition before this Hon'ble High Court, which is likely to be succeeded on the grounds mentioned therein.

2. That in fact the impugned order has passed on 30.09.2021 and copy of the same was applied on 19.05.2023 and the same was delivered on 31.05.2023. Thereafter, petitioner was advised that appeal is to be filed and petitioner handed over all the documents to his counsel at Tapa. Thereafter, the counsel prepared the appeal and approached the office of Divisional Commissioner, Barnala but the officer of Divisional Commissioner Barnala did not entertained the appeal on the ground that the appeal is not maintainable before the Commissioner and the

same is filed before the FCR. But Clerk of the counsel forget to apprise the petitioner regarding the status of case. Thereafter in the third week of May, 2023 when the petitioner contacted his counsel at Barnala regarding the status of his case, then petitioner was told that the file has been returned and his clerk was told to inform the petitioner, but inadvertently did not inform the petitioner. when the clerk was contacted then he disclosed that, he forget to apprise the petitioner regarding the filing of case.

3. *That thereafter petitioner immediately collected the documents of the case from his counsel at Barnala and engaged a counsel to file a petition before this Hon'ble Court without any further delay.*

4. *That the delay in filing the petition is due to the above mentioned reason which is neither intentional nor wilful.*

5. *That if the delay in filing the petition is not condoned then the petitioners would suffer an irreparable loss and injury which cannot be compensated in any manner.*

6. *That there are sufficient grounds for the condonation of delay. In the case titled 'N. Balakrishnan Versus M. Krishnamurti' reported as 1991 (1) PLR 462, it has been held that a sufficient cause should receive a liberal construction so as to advance substantial justice. Further in the case titled "Harbans Singh Versus Punjab National Bank and others", reported as 2003 PLR 1, it has been held that a litigant is not going to gain anything by filing an appeal at a belated stage. Unless some malafide and bad intention is attributed to him, mere filing of an appeal at a belated stage, will not disentitle him to get his appeal decided on merits.*

It is, therefore, respectfully prayed that the application may kindly be allowed and the delay of 437 days in filing the petition may kindly be condoned, in the interest of justice.”

6.1 The revision petition has been dismissed by learned Financial Commissioner, vide impugned order dated 19.01.2024 (Annexure P-9) on the point of delay, by holding as under :-

“ In the present application for condonation of delay under section 5 of Limitation Act, 1963, no sufficient cause has been shown by the applicants/petitioners which restrained them to approach this court within the prescribed period of limitation. The petitioners/applicants in their application under section 5 of the Limitation Act has mentioned that the appeal was prepared by their Counsel to file before the Divisional Commissioner, Barnala. In fact, there is no Divisional Commissioner Office at Barnala. Thus, plea of the petitioner is false and misleading and cannot be relied upon. Further, on the one hand, it is mentioned in the application under section 5 of the Act, 1963 that certified copy of the order dated: 30.09.2021 was supplied on 31.05.2023 and on other hand, it has been mentioned that the petitioners/applicants approached the Counsel in the 3rd week of May, 2023. Both the statements are contradictory. Thus, the conduct of the petitioners shows their malafide intention to prolong the partition proceedings. The petitioners/applicants have failed to show the sufficient cause which prevented them to approach this court within the prescribed period of limitation.

5. Resultantly, the present revision petition is dismissed in-limine on the point of delay. Copy of this

order be communicated to the courts below. File be consigned to the record room.”

7. I have gone through the order passed by learned Financial Commissioner and find that indeed the petitioners have not given any sufficient cause for condonation of delay in their application. It is clearly borne out from the application itself that although the order of partition was passed on 30.09.2021, however, copy thereof was applied only on 19.05.2023 i.e. after more than 1 year. It is further mentioned in the application that after getting certified copy of order dated 30.09.2021, the petitioners had handed over all the documents to their counsel at Tapa, whereupon their counsel prepared an appeal and approached the office of Divisional Commissioner, Barnala, who did not entertain the appeal.

7.1 Concededly, there is no office of Divisional Commissioner at Barnala. The said plea of the petitioners has been rightly found to be false and misleading by learned Financial Commissioner.

8. When the case in hand is considered in the light of judicial pronouncements noticed above, there is no hesitation in concluding that the petitioners have failed to show any sufficient cause for condonation of delay in filing the revision petition before learned Financial Commissioner, therefore the same was rightly rejected by learned Financial Commissioner, vide impugned order dated 19.01.2024 (Annexure P-9).

9. In view of above, I find no merit in this writ petition and same is dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

24.07.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No