

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8808 of 2015

Date of Decision: 13.05.2016

Gurcharan Singh Cheema

... Petitioner(s)

Versus

Punjab State Civil Supplies Corporation Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Vipin Mahajan, Advocate
for the petitioner(s).

Mr. Deepak Sabherwal, Advocate
for respondents No.1 & 2.

Shekher Dhawan, J.

Present petition is challenge to the order dated 30.11.2015, passed by learned Additional District Judge, Patiala, whereby application, filed by the petitioner under Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the Act") for condonation of delay of 184 delays in filing the appeal, was dismissed.

Learned counsel for the petitioner manly submitted that reasons for non filing of the appeal before the first Appellate Court were

beyond his control on the ground that his counsel before the trial Court did not inform him regarding the decision of the case and as such appeal could not be filed within a period of limitation. Otherwise, there was no reason for the petitioner not to file appeal as main suit was for recovery. Petitioner stood retired from the services of the Corporation in the year 2006 and he was not paid pensionary benefits. Petitioner was not having sufficient resources to engage the counsel and on that ground, application for condonation of delay of 184 days in filing the appeal was filed. But the Court below declined the same, which is without any merit and the impugned order be set aside.

Learned counsel for the respondent submitted that there was no justified reason for condonation of delay of 184 days in filing the appeal and the Court below has rightly declined the application. There is no such requirement of law that on account of non-informing of the decision of a suit before the trial Court by the counsel for the petitioner would become another ground for extension of time to file appeal. So, present petition is without any merit and the same be dismissed.

I have heard learned counsel for the parties and appraised record of the case. This Court is of the considered view that there is no dispute on the facts that first appeal was filed by the petitioner along with application for condonation of delay of 184 days in filing thereof. The ground taken in the application was non-availability of sufficient resources with the petitioner as he was a retired employee and was not getting any pensionary benefit. More so, his counsel had not informed him about the result before the Court of first instance.

Similar matter was before Hon'ble the Apex Court in ***Improvement Trust, Ludhiana and Ujagar Singh and Others 2010(6) SCC 786***, wherein a view was taken that there was no huge delay warranting dismissal of the application for condonation of delay on such hyper-technical ground. In the aforesaid judgment, Hon'ble the Apex Court observed as under:-

"13. *Be that as it may, we are of the opinion that the delay in filing the first appeal before District Judge, Ludhiana, for setting aside the sale has not been so huge warranting its dismissal on such hypertechnical ground. In fact, according to us, appellant had taken all possible steps to prosecute the matter within time. Had there been an intimation sent to the appellant by Mr. P.K. Jain, its erstwhile Advocate, and if even thereafter appellant had acted callously then we could have understood the negligent attitude of the appellant but that was not the case here. No sooner the appellant came to know about the dismissal of its objection filed before the Executing Court, under Order 21 Rule 90 of the CPC it made enquiries and filed the appeal. While considering the application for condonation of delay no straight jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct behaviour and*

attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter. Even though Mr. Vijay Hansaria appearing for the respondent No.5 has argued the matter at length and tried his best to persuade us to come to the conclusion that no sufficient grounds made out to interfere with the concurrent findings of facts but we are afraid, we are not satisfied with the line of arguments so adopted by the counsel for respondent No.5 and cannot subscribe to the same.

14. *After all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold. Both sides had tried to argue the matter on merits but we refrain ourselves from touching the merits of the matter as that can best be done by the Executing Court which had denied an opportunity to the appellant to lead evidence and to prove the issues so formulated."*

Similar view was taken by Co-ordinate Bench of this Court in ***Amarjit Kaur v. Punjab State Power Corporation Limited and Others (Civil Revision No. 4787 of 2015, decided on 21.8.2015).*** However, the Court below has not considered this aspect while passing the order.

Consequently, present petition is hereby accepted; impugned order dated 30.11.2015 stands set aside and delay of 184 days in filing the appeal before the first Appellate Court is condoned, subject to payment of ₹ 5,000/- as costs to be paid by the petitioner.

(Shekher Dhawan)
Judge

May 13, 2016
"DK"