

## Bharat Singh and Another Vs Bhagirthi

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Feb. 24, 1961

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 45 Rule 7

**Citation:** AIR 1961 P&H 475

**Hon'ble Judges:** P.C. Pandit, J

**Bench:** Single Bench

**Advocate:** H.L. Saran, for the Appellant; P.C. Jain, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

P.C. Pandit, J.

This is a petition dated 20-12-1960 under Order 45, Rule 7 of the Code of Civil Procedure, for condoning the delay in furnishing the security for costs after a certificate had been granted by this Court for leave to appeal to the Supreme Court.

2. The required certificate was granted by this Court on 12-8-1960. Under Order 45, Rule 7 of the Code of Civil Procedure, the security for

costs amounting to Rs. 2,500/- had to be furnished within six weeks from the date of the grant of the certificate. It is admitted that this security was

not furnished within the prescribed period. The petitioners, however, have stated in this petition that they had purchased National Savings

Certificates of the face value of Rs. 2,500/- and sent the same to Chandigarh on 23-9-1960, that is within the prescribed time, along with an

application for transfer of the said certificates in favour of the Registrar of this Court, who had to sign the declaration on behalf of the transferee.

It is further stated that on 11/12-10-1960, the Deputy Registrar returned the said certificates, along with the application of transfer, requiring the

petitioners to get the same pledged in favour of the Registrar. The petitioners thereupon presented the same to the Post Master, New Delhi, who,

by his letter dated 17-10-1960, returned the certificates and declined to transfer them for want of signatures of the transferee.

The petitioners on the same day enclosed the letter of the Post Master along with another form and sent them to this Court with a request that the

said form may be signed by the Registrar. On 5-11-1960 the form was sent by this Court to the petitioners after the same had been signed by the

Registrar. Soon after the receipt of the form the petitioners applied to the Post Master, got the certificates transferred in favour of the Registrar and

sent them to this Court,

On these facts the petitioners stated that they had furnished the National Savings Certificates along with the necessary transfer form within limitation

but the same could not be endorsed for no fault of theirs and the administrative steps in having the same endorsed in favour of the Registrar of this

Court had resulted in this delay. They have, consequently, prayed that, in the first place, there was no delay on their part in furnishing the security

but, if there was any, the same may be condoned because it was not due to any negligence on their part but due to the circumstances beyond their

control.

3. Learned counsel for the respondent submitted that this Court had no power to extend the time for furnishing the security under Order 45, Rule

7, Civil Procedure Code, and Order 12, Rule 3 of the Supreme Court Rules, 1950. He relied on a Division Bench authority of the Allahabad High

Court reported as Gorakh Ram and Others Vs. Dhannu Ram and Another, and Lal Dharam Mirat Singh and Another Vs. Kuar Man Singh and

Another,

This question has been decided by the various High Courts and it has been held by them that under Order 45, Rule 7, Civil Procedure Code, read

with Rule 9 of the Privy Council Rules, 1920, which is analogous to Order 12, Rule 3 of the Supreme Court Rules, the High Court has power to

extend the time for deposit of security beyond the period fixed in Order 45, Rule 7 CPC (see in this connection Ghulam Rasul v. Ghulam Qutab-

ud-Din, AIR 1942 Lah 147 (FB), Nilkant Balwant Natu Vs. Shri Sachidanand Vidya Narsimha Bharati, Bishnath Singh and Others Vs. Collector

in Charge of Court of Wards Estate of Sri Ram Chandra Naik Kaliya, Babu Lachmeshwar Prasad Shukul and Others Vs. Babu Girdhari Lal

Chaudhuri and Others, Gulam Hussain v. Mahsurbeg, AIR 1952 Nag 302 (FB), Thota Pichhaiah v. Narasimhacharyulu. (S) AIR 1956 Ap 120

(FB), Ramayya v. V. Lakshmayya, AIR 1938 Mad 793 (FB), Hari Charan Das v. Jagadindra Kishore Deb, (S) AIR 1956 Tri 20, Pitamhari

Dibya Vs. Chandrasekhar Praharaj and Others, Burjore v. Bhagana ILR 10 Cal 557 (PC). I would prefer to follow the rule laid down in these

authorities, because it enables the Court to adjudicate upon the merits of the case and not to dismiss the same merely on a technical ground.

4. For these reasons, I hold that if sufficient cause is shown for condoning the delay, this Court has the power to extend time for furnishing the

security under Order 45, Rule 7, Civil Procedure Code, and Order 12, Rule 3, Supreme Court Rules. In the present case, in view of the facts

stated in the petition, I find that sufficient cause has been shown by the petitioners.

5. I would, consequently, accept this petition and condone the delay in furnishing the security. There will, however, be no order as to costs.