

(2004) 10 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 70 of 1990

Harbhajan Singh

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision: Oct. 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Section 12, 5

Citation: (2005) 139 PLR 658 : (2005) 1 RCR(Civil) 82

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: A.S. Narang, for the Appellant; S.C. Chhabra and Ruhi Chhabra, for the Respondent

Final Decision: Allowed

Judgement

Virender Singh, J.

On an oral request of the learned counsel for the petitioner the present petition is being treated as a revision under Article 227 of the Constitution of India.

2. The petitioner is the plaintiff. His suit for declaration and mandatory injunction against the respondent-defendant was dismissed by learned Additional Senior Sub-Judge, Ferozepur vide judgment dated 19.8.1987. Aggrieved by the same, he preferred an appeal. Since the appeal was time barred by eight days, an application for condonation of delay was filed. The said application was resisted by the respondent and ultimately after both the sides have led evidence, the appeal preferred by the petitioner was dismissed being filed beyond limitation vide impugned order dated 31.8.1989 passed by learned Additional District Judge, Ferozepur. Hence this revision.

3. Pursuant to notice to respondent Mr. S.C. Chhabra, and Ms. Ruhi Chhabra, Advocates have put their appearance.

4. I have heard Mr. A.S. Narang, learned counsel for the petitioner, Mr. S.C. Chhabra, and Ms. Ruhi Chhabra, counsel for the respondent.

5. Mr. Narang contends that although in the application moved by him, the delay in filing the appeal is described as eight days but in fact the delay is of 5 days only as the suit of the petitioner was dismissed on 19.8.1987, an application was moved for obtaining certified copy of the judgment on 10.9.1987 which was prepared on 28.9.1987. Thereafter another application was moved on 10.10.1987 for obtaining certified copy of the decree sheet which was prepared on 12.10.1987. The appeal was then instituted on 16.10.1987. Applying the provisions of Section 12 of the Limitation Act the time required for obtaining copy of the judgment as well as decree is to be excluded. Thus, the delay comes to five days only.

6. Mr. Narang, then contends that even otherwise the court should adopt a liberal approach while deciding the question of limitation if the delay is of a few days as is held in [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), and [Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others](#), .

7. The learned counsel further contends that even otherwise the so-called delay in filing the appeal is fully explained by the petitioner as he had fallen ill on account of Herpes; the said ailment is proved by Dr. Prem Parkash Bajaj (AW1) examined by the petitioner before the appellate Court to prove the specific issue framed by the appellate Court. The onus was, thus, discharged and the appellate Court should not have dismissed the appeal of the petitioner on the ground of limitation that too of a very short span of just a few days. This all has caused grave miscarriage of justice and the appeal filed by the petitioner who otherwise has good case on merits deserves to be heard on merits.

8. On the basis of the aforesaid submissions, the learned counsel prays for allowing the present petition.

9. Refuting the submission, Mr. Chhabra, vehemently contends that may be there is a delay of a few days but the conduct of the party asking for the relief of condonation is to be seen. At the same time another fact which needs consideration is as to whether there was sufficient cause to condone the delay. Developing his arguments, Mr.Chhabra has drawn my attention to the observation made by the appellate court on issue No. 1 where the conduct of the petitioner vis-a-vis the medical evidence adduced by him in support of his case is discussed. Mr. Chhabra then contends that the petitioner has to explain each day's delay in this case and he rather had been sleeping over the matter after 10.9.1987 upto 10.10.1987 the day of getting the copy of judgment when he applied for copy of the decree sheet. If the conduct of the petitioner is seen in the flashback of the evidence adduced by him, it speaks volumes of the fact that there is no sufficient cause to condone the delay in filing the appeal by the petitioner and as such the order of the appellate Court

deserves to be upheld.

10. After hearing both the sides at length and perusing the records available on the file, I am of the considered view that the present revision petition deserves to be allowed.

11. In *Mst. Katiji and other's* case (supra) their Lordships while dealing with the aspect of condonation of the delay have observed as under:-

"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every, second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fide. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

12. In *Vedabai alias Vijayantabai Baburao's* case (supra) their Lordships while dealing with the same situation have held that the principle of advancing substantial justice is of prime importance.

13. Applying the aforesaid ratio and the fact that admittedly there is a delay of a few days only in filing the appeal, in my considered view, the ends of justice would be adequately met if the appeal of the petitioner is heard on merits by condoning the said delay.

14. Consequently, the present revision petition is allowed, impugned order dated 31.8.1989 passed by the learned Additional District Judge, Ferozepur whereby the appeal of the petitioner is dismissed as time barred, is hereby set aside. The delay, as such, is condoned and the matter is remitted to the appellate Court with the direction that the appeal shall now be disposed of on merits after affording reasonable opportunity of hearing to both the sides.

The parties through their respective counsel shall be appearing before the appellate Court on 8.11.2004.

Since the case has become quite old by now, it would be most appropriate if the appeal is disposed of by the appellate Court expeditiously as far as possible within three months from the next date fixed before it.