

Sohan Lal Monga Vs Punjab State and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 21, 1990

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 9 Rule 13, 115

Citation: (1991) 99 PLR 428

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: A.L. Bahal, for the Appellant; Iqbal Singh, for the Respondent

Final Decision: Allowed

Judgement

G.R. Majithia, J.

This revision petition is directed against the orders dated January 23, 1986 and March 9, 1987 passed by Additional

District Judge, Amritsar. Through the former order, the judge, dismissed the application for condonation of delay and as result thereof, the appeal

was dismissed having been filed beyond limitation Through the latter order, he dismissed the application bearing Civil Misc. No. 5 of 1986 for

recalling the order dated January 23, 1986 vide which the appeal has been dismissed as having been filed beyond limitation.

2. The examination of the file reveals that the judge framed an issue to the effect whether there are sufficient grounds for extending the period of

limitation on August 6, 1985 he adjourned the case for the evidence of the applicant on August 24, 1985. Thereafter, the case was adjourned

more than once because the Presiding Officer was on leave On January 4, 1986, the case was received by transfer by another Additional District

Judge and on that date, he fixed the case for January 23, 1986 for the evidence of the applicant. On January 23, 1986, the application for

condonation of delay was dismissed on the ground that the allegations contained therein were not supported by any material. The observation in

the order docs not indicate whether any witness was present in. the court. The first Appellate Court had already framed the issue and permitted the

applicant to summon the evidence. The learned counsel for the applicant maintained that he had summoned the evidence. Be that as it is, I find that

the learned Appellate Judge has acted with great haste in dismissing the application for condonation of delay. In these circumstances, I think it will

meet the on is of justice if the order dated January 23, 1986 is set aside.

3. The application for recalling the ex-parte order dated January 23, 1986 which was registered as Civil Misc. application No. 5 of 1986 was

dismissed on wholly wrong premises. The Additional District Judge refused to recall the order dated January 23, 1986 on the ground that the

appeal was dismissed being barred by time and there was absolutely no justification for acceding to the request made by the petitioner for

restoration of the appeal. The Judge is mistaken. The application for condonation of delay was dismissed in the absence of the petitioner although

on merits The petitioner was well within his rights to move the court for recalling the order and for disposal of the application for condonation of

delay in his presence, The .observation of the Additional District Judge that since the appeal was dismissed being barred by time, he could not

entertain the application for recalling, the order is without any basis and appears, to have been made on mistaken view of law The petitioner can

maintain the application for recalling the earlier order since it was passed in his absence. The expression on merits will not disentitle the court from

recalling the order. Resultantly, the order dated March 9, 1987 is set aside.

4. The revision petition is allowed. The file should be sent back to the District Judge, Amritsar forthwith who will either dispose of the application

u/s 5 of the Limitation Act and Civil Misc. Application No, 5 of 1986 himself or send these application to any other Additional District Judge

posted at the station for disposal. The District Judge himself or to whomsoever the applications are entrusted for disposal shall dispose them of

within three months from the date of receipt of the order.