

(1990) 08 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2418 of 1987

Sohan Lal Monga

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision: Aug. 21, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - 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, 1956 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 does 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 ends 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 applications 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 of them within three months from the date of receipt of the order.