
Rajiv Kukreja Vs State Information Commission and Others

Letters Patent Appeal No. 268 of 2013

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 14, 2013

Citation: (2013) 172 PLR 96

Hon'ble Judges: Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Nakul Sharma, for the Appellant; Parbodh Chander Bali for Respondent No. 2
(Party-in-Person), for the Respondent

Judgement

Ajay Kumar Mittal, J.

C.M. No. 724 of 2013

1. This is an application u/s 5 of the Limitation Act, 1963 for condonation of delay of eight days in filing the appeal. Notice of the application was

given to respondent No. 2. Reply has been filed. After hearing learned counsel for the appellant and respondent No. 2 in person, the delay of eight

days in filing the appeal is condoned. Civil Miscellaneous application stands disposed of.

L.P.A. No. 268 of 2013

2. Prayer in this Letters Patent Appeal is for quashing the order dated 31.10.2012 passed by learned Single Judge in CWP No. 7382 of 2011,

dismissing the writ petition for non-prosecution and also the order dated 30.11.2012 passed in CM No. 16715 of 2012 rejecting the application

for recalling the order dated 31.10.2012.

3. Briefly, the facts as narrated in the appeal may be noticed. The writ petition filed by the appellant was fixed for final arguments on 31.10.2012

before the learned Single Judge. On that day, an adjournment slip was filed on the ground that the arguing counsel being out station counsel could

not appear as he used to come only on every Thursday. According to the appellant, on that day, another counsel was present and he also made

request for adjournment on behalf of the arguing counsel. The learned Single Judge did not accept the request and dismissed the writ petition for

non-prosecution vide order dated 31.10.2012. Thereafter, the appellant moved an application being CM No. 16715 of 2012 for restoration of the

writ petition. The said application was also dismissed vide order dated 30.11.2012 as written request for adjournment had been made on behalf of

the arguing counsel. Hence, the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the appellant should not be made to suffer for the fault of his counsel and one opportunity may

be granted to the appellant to present his case before the writ petition.

5. We have heard learned counsel for the appellant and respondent No. 2 and perused the record.

6. The Hon^{ble} Supreme Court in V.C. Rangadurai Vs. D. Gopalan and Others, noticed that relation between a lawyer and his client is highly

fiduciary in its nature and of a very delicate, exacting and confinement character requiring a high degree of fidelity and good faith. Lawyer's

paramount duty is to the client. When a lawyer is entrusted with a brief, he is expected to follow the norms of professional ethics and try to protect

the interests of his client, in relation to whom he occupies a position of trust. It was recorded as under:-

3.1 Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the

fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty-six, said in a speech, in 1864, that the first great quality of an

advocate was "to reckon everything subordinate to the interests of his client". What he said in 1864 about "the paramountcy of the client's

interest" is equally true today. The relation between a lawyer and his client is highly, fiduciary in its nature and of a very delicate, exacting, and

confidential character requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and

confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional

ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust

reposed in him by the complainants.

7. The conduct of a lawyer is not appreciated for non-appearance without any valid reason. The ground for seeking adjournment that the lawyer is

an outside counsel and used to come only on every Thursday is a very callous approach on the part of the lawyer. When a lawyer is entrusted with

a brief, he is expected to follow the norms of professional ethics and try to protect the interests of his clients in relation to whom he occupies a

position of trust. He has a duty to fulfill all his obligations towards his client with care and act in good faith.

8. At the same time, the party should not be made to suffer for the fault of his counsel. In Rafiq and Another Vs. Munshilal and Another, the

Hon"ble Supreme Court held that the parties should not be made to suffer for the fault of a lawyer; that an innocent party cannot be made to suffer

merely because his chosen advocate defaulted. It was observed as under:-

.....What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his

advocate. If we reject this appeal as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear

but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction,

deliberate omission, or misdemeanor of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself

deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter.

However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this

appeal set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to

its original number in the High Court and be disposed of according to law.

9. In the present case, though the ground for adjournment that the arguing counsel was an out station counsel and another counsel on his behalf had

made a request for adjournment on the ground that the arguing counsel used to come only on every Thursday, cannot be appreciated and said to

be genuine cause for seeking adjournment but keeping in view the fact that the appellant should not be made to suffer for the fault of his lawyer, we

are inclined to provide one opportunity to the appellant to plead his case on merits before the learned Single Judge. This shall be subject to

payment of Rs. 25,000/- as costs. In compliance of the order passed by this Court on 5.3.2013, a draft bearing No. 193202 amounting to Rs.

25,000/- dated 16.02.2013 has been produced by the Registry in Court today which has been handed over to respondent No. 2 who is present in

person and a copy therefore has been taken on record. In view of the above, the appeal is allowed. The order dated 31.10.2012 dismissing the

writ petition for non-prosecution and also the order dated 30.11.2012 dismissing the application for recalling the said order, are set aside. The writ

petition is restored to its original number to be heard by the learned single judge.