

Gurdial Singh Vs Surjit Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 2, 2013

Acts Referred: Limitation Act, 1963 " Section 5

Citation: (2013) 171 PLR 407

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Anupama Sharma for Mr. Amandeep Singh Manaise, for the Appellant;

Final Decision: Allowed

Judgement

A.N. Jindal, J.

Respondents No. 1 to 10 served through munadi and affixation, but none has put in appearance on their behalf. Heard.

2. There was delay of four months and 10 days in filing the appeal before the first appellate court, which has been duly explained by the petitioner.

The first appellate court failed to take into consideration the fact that the case of the petitioner was being represented by his attorney Mohinder

Singh, who had died, therefore, the appeal could not be filed within time. The petitioner would not be benefited by filing delayed appeal.

3. It was observed by the Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, that each and

every day delay need not be explained and the meritorious claim cannot be thrown away into the dustbin without giving adequate hearing. The

Delhi High Court, while condoning 52 days delay in filing the appeal in the case of Jyotsana Sharda Vs. Gaurav Sharda, 5 observed as under:-

...No doubt, originally the Apex Court in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , had held that while seeking condonation of

delay u/s 5 of the Limitation Act the application must not only show as to why he did not file the appeal on the last day of limitation but he must

explain each day's delay in filing the appeal. The later judgments of the Apex Court have considerably diluted this requirement of explaining each

days delay by a party. The latest trend and the ratio cases which the Apex Court has laid down in the judgments is that the Court must adopt a

liberal approach rather than pedantic approach while doing so. It must see the bonafides of the person who is preferring the appeal rather than

seeing the quantum of delay which has been occasioned. Reliance in this regard can be placed on Collector, Land Acquisition, Anantnag and

Another Vs. Mst. Katiji and Others,

4. In Jyotsana Sharda's case (supra), the Delhi High Court further observed as under:-

With utmost respect to the impugned order I feel that it is not the job of the Court to advise as to what ought to have been done or ought not to

have been done by a party. The Court has to only see as to whether the explanation which is furnished by a party for approaching the Court in

after a delay whether the explanation given by him is genuine one or not and secondly the Court must not adopt an approach to defeat the

substantive right of a party and ignore the consideration of the merits of the appeal on flimsy technicalities because procedural laws should not be

resorted to defeat the rights of the parties to get their appeal considered on merits.

5. Though in the recent judgment of Balwant Singh (Dead) Vs. Jagdish Singh and Others, the Apex Court took the view that if by the expiry of the

period of limitation a right has accrued, that cannot be taken away on asking of a party but the Apex Court excluded those cases where the

applicant was thoroughly negligent and there was no plausible explanation for condonation of delay. In Balwant Singh's case (supra) the Court

observed as under:-

...Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient

cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly

as result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be

achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a

valuable right that has accrued to it in law as a result of his acting vigilantly.

6. Yet this judgment, if read in balance to the judgment which deal with the grievance of the appellant, who was not negligent in filing the appeal

within time, but the delay occurred for good and sufficient reasons, as reasons beyond his control, then he should instead of condemning him

unheard, be given a chance to have the decision on merits.

7. Thus, the Apex Court has relaxed the right of condonation in cases where sufficient cause is shown and the delay is unintentional. The Apex

Court in a recent judgment delivered in case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, laid down the following

guidelines for condoning the delay:-

(i) The Courts generally adopt a liberal approach in considering the application for condonation of delay on the ground of sufficient cause u/s 5 of

the Limitation Act.

(ii) Rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics, but seek

their remedy promptly.

(iii) Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient

cause and its own conduct, it will be unreasonable to take away that.

(iv) Whilst considering applications for condonation of delay u/s 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled

discretionary powers-All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to law,

Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, relied.

8. In the instant case, the petitioner has not only set up sufficient cause and shown his bonafide but has also tried to justify the delay for non filing

the appeal within the period prescribed, therefore, the petitioner cannot be said to be either negligent or falter.

9. Thus, keeping in view the aforesaid law of the land and also keeping the note of the judgment delivered in the case of Mrs. Saroj and Others

Vs. Sh. Baljeet Singh and Another, and also the fact that the petitioner has a good case on merits, which also could be considered as a sufficient

cause for the purpose of condonation of delay, this court is of the considered opinion that the appeal should have been decided on merits instead

of dismissing the same on the ground of delay. Resultantly, this petition is allowed, impugned order is set aside and the delay in filing the appeal

before the first appellate court is condoned, subject to payment of Rs. 5,000/- as costs. The first appellate court is directed to proceed in

accordance with law.