

(2018) 10 P&H CK 0334

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 8571 Of 2015 (O&M)

Amritsar Improvement Turst, Amritsar And another

APPELLANT

Vs

Maresh Kumar And another

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2019) 193 PunLR 393

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : S.C. Pathela, N.K. Vadhera

Final Decision : Allowed

Judgement

Raj Mohan Singh, J

[1]. This revision petition has been preferred by the petitioners against the order dated 26.08.2015 passed by the Addl. District Judge, Amritsar, whereby application under Section 5 of the Limitation Act filed along with the appeal was dismissed and as a consequence of dismissal of the said application, the appeal was also dismissed vide the impugned order.

[2]. Perusal of the record would show that there was delay of 86 days in filing the appeal before the lower Appellate Court.

[3]. On 17.12.2015, while issuing notice of motion, following order was passed by the Co-ordinate Bench of this Court:-

"Learned counsel for the petitioners contends that the civil suit filed by the plaintiffs/respondents was decreed, vide judgment and decree dated 08.12.2011 (P-4). This suit has been challenged by the petitioners by filing an appeal and an application has also been filed for condoning the delay in filing the appeal but the application as well as appeal filed by the petitioners has been dismissed, vide order dated 28.04.2012/16.05.2012. Learned counsel for the petitioner submits

that the lower Appellate Court should have allowed the application of the petitioners, in view of the judgment of Hon'ble the Supreme Court of India in a case of State of Nagaland vs Lipok AO and others, 2005(2) RCR (Crl.) 414.

Notice of motion for 10.02.2016."

[4]. Perusal of the impugned order would show that the lower Appellate Court, discussed the material on record in para No.12 of its order and ultimately held that no sufficient cause for condonation of delay in filing the appeal has come forth. The applicants examined Sanjiv Bhasin as AW-1, who tendered his affidavit in the evidence. The judgment and decree passed by the trial Court on 08.12.2011 and certified copy was applied. The same was prepared on 25.01.2012. According to testimony of AW-1, there were Assembly elections in the Punjab and due to this reason, the Chairman and other staff members were busy in election duties. After conclusion of the election process, the filing in question was processed and decision was taken for filing the appeal. The file was sent for seeking opinion of the Law Officer and the same remained pending with the Law Officer till 22.03.2012. Thereafter, it remained pending with the office of Executive Officer from 23.03.2012 to 27.03.2012. The file remained processed from one table to other and ultimately it was sent to the Legal Assistant for preparing the appeal on 03.04.2012. The grounds of appeal were prepared on 28.04.2012 and were produced before the Executive Officer on 09.05.2012. The grounds of appeal were signed on 10.05.2012 by the Chairman and the appeal was accordingly filed on 15.05.2012. In this process, delay of 86 days was occasioned in filing the appeal before the lower Appellate Court. So, there was an omission on the part of the appellants.

[5]. Learned counsel for the petitioners by referring to the observations made by the Hon'ble Apex Court in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399 and State of Rajasthan and another vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805, contended that the delay in question has occasioned for the reasons as explained above. The same may be condoned as merits of the case cannot be thrown at the verge of technicality.

[6]. Learned counsel further by relying upon submitted that in case of Lanka Venkateshwaru (Dead) by LRs vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363) the Hon'ble Apex Court has condoned the delay of 3703 days in bringing on record the legal representatives of the deceased respondent and it was held that delay was due to insufficiency, inaptitude and negligence of Government Pleader. In Collector, Land Acquisition Anantnag vs. Mst. Katiji, (1987) 2 SCC 107, the Hon'ble Apex Court has also observed that meritorious cases cannot be pitted against technicality and in such a counter merit should prevail.

[7]. Learned counsel further submitted that delay of 86 days in filing the appeal is not such, which would deprive the petitioners from exercising discretion by the

Court in condonation of delay at the most, the cause espoused by the petitioners in the first appeal would be decided on merits. Learned counsel also relied upon State (NCT of Delhi) vs. Ahmed Jaan, 2008(4) R.C.R. (Criminal) 119.

[8]. On the other hand, learned counsel for the respondents by relying upon Amalendu Kumar Bera and others vs. The State of West Bengal, 2013(2) R.C.R. (Civil) 534 and Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr., 2012(2) CivCC 1, contended that though the Courts are liberal in the matters of condonation of delay, but serious laches and negligence cannot be allowed to be perpetuated at the instance of State by condoning the delay and it shall not be mechanically considered in the absence of any sufficient cause.

[9]. I have considered the submissions made by learned counsel for the parties and also perused the material on record.

[10]. As per the reason given for the condonation of delay, the official mechanism is answerable for the latch in question inasmuch as that during the intervening period, there were Assembly elections and the employees of the petitioners' Improvement Trust were busy in the election process. The explanation offered by the petitioners appears to be plausible inasmuch as that though the private citizen and the State are the litigants at part, but some amount of latitude can be given for condonation of delay in filing the appeal by the State because in the event of losing appeal on the ground of delay by the State, no individual in person is affected, rather ultimate public interest would be affected. Even otherwise, the delay of 86 days in filing has not created any third party interest in favour of anyone, which would disentitle the petitioners from seeking any condonation after a period of 86 days for the delay in question.

[11]. In view of above and on the basis of precedents on record, the prayer made by the petitioners is accepted. This revision petition is allowed. Impugned order dated 26.08.2015 passed by the Addl. District Judge, Amritsar is set aside, however subject to payment of costs of Rs.20,000/- to be paid to the respondents. The petitioners would be entitled to fix responsibility for the latch and omission committed by its official(s) and can recover the amount of costs from them.

[12]. Both the parties are directed to be appear before the lower Appellate Court on 30.10.2018. The payment of costs shall be the condition precedent for granting indulgence by the lower Appellate Court for further prosecution of the appeal.