
(2011) 01 P&H CK 0385

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1325 of 2009 (O and M)

Des Raj Yadav

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 P&H CK 0385

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No.3920-C of 2009

1. Replies on behalf of Respondent Nos. 1, 2 and 5 filed today in Court, are taken on record.
2. Copies given to the opposite counsel.
3. This is application by Appellant for condonation of delay of 839 days in filing the appeal. It is alleged in the application that the applicant-Appellant had engaged counsel for filing the instant second appeal, but Clerk of the counsel left the office of the counsel and, therefore, status of the case remained unknown to the counsel and only recently before filing of the appeal, the counsel found out that appeal had never been filed.
4. The application has been resisted by the Respondents. The allegations made in the application have been controverted.
5. I have heard learned Counsel for the parties and perused the case file.
6. Learned Counsel for the applicant-Appellant vehemently contended that delay in filing the appeal occurred because Clerk of the counsel left the office of the counsel. On the other hand, learned Counsel for the Respondents contended that

long delay of 839 days i.e more than 27 months cannot be condoned on the aforesaid vague ground.

7. I have carefully considered the rival contentions. There is delay of more than 27 months in filing the appeal. Said long delay cannot be condoned on vague, general and specious ground that Clerk of the counsel had left the office of the counsel. It may be added that it has also not been mentioned in the application as to who was the Clerk of the counsel, who left the office and when he left the office and when new Clerk joined the office of the counsel and when Appellant contacted the counsel to know the status of the case. It is highly improbable that the Appellant engaging counsel for filing the second appeal would not contact the counsel for more than 2 years and 3 months to know the status of his case. Moreover, affidavit of Clerk of the counsel has been annexed in support of this application, but it is not specifically mentioned whether the deponent is the new Clerk or the old Clerk of the counsel. Learned Counsel for the Appellant states that deponent is new Clerk of the counsel. However, the new Clerk of the counsel could not be aware of what happened at the time of the previous Clerk of the counsel. The deponent could not state about facts which were in the knowledge of the previous Clerk of the counsel.

8. It may also be added that appeal was prepared on 24.02.2009. However, the appeal was actually filed on 20.03.2009.

9. If such long delay of more than 27 months is condoned on such vague, general and specious ground, the law of limitation would be rendered completely infructuous. No ground much less sufficient ground for condonation of long delay of 839 days in filing the appeal is made out. Accordingly, the application is dismissed.

Main Appeal.

10. The appeal is dismissed as time barred.