

(2002) 10 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3835 of 2002 (O and M)

Harbans Singh

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2003) 133 PLR 99 : (2002) 4 RCR(Civil) 380

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Sushil Saini, for the Appellant; H.R. Bansal, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Notice of motion.

2. Mr. H.R. Bansal, Advocate accepts notice on behalf of respondent No. 3.

3. With the consent of the counsel for both the parties, the case is taken up for hearing today.

4. Counsel for the parties heard.

5. Petitioner/plaintiff filed a suit for declaration with a prayer that memo dated 11.5.1990, vide which less balance has been shown in his Savings Account, be declared null and void. He further prayed that he is entitled to withdraw amount to the extent of Rs. 14,535.20, as has been shown in his Pass Book. His suit was dismissed. He filed an appeal, which was barred by limitation. An application was moved u/s 5 of the Limitation Act, 1963, with a prayer that the delay in filing the appeal be condoned. That application was dismissed by the appellate Court below and consequently, vide separate order, his appeal was also dismissed.

6. Initially, petitioner filed regular second appeal in this Court, which was numbered as RSA No. 155 of 2001 and when matter came up for hearing before this Court on 30.4.2001 by taking note of judgment titled as Des Raj Vs. Om

Parkash and Another, , this Court opined that second appeal is not competent. Then liberty was granted to the petitioner to move an application with a prayer that appeal be treated as civil revision. Thereafter, petitioner moved an application in that regard and accordingly, Registry numbered his appeal filed, as Civil Revision No. 3835 of 2002.

7. Mr. Sushil Saini, Advocate appearing for petitioner has vehemently contended that his application for condonation of delay had wrongly been declined. He had given sufficient reasons for not filing the appeal well in time. He further stated that procedure is only for enhancement of justice and not to subvert it. Counsel further stated that order dismissing his application for condonation of delay and also order of that very date, vide which his appeal was dismissed, (copies of judgment and decree are on record), be quashed in the interest of justice.

8. Mr. Bansal appearing for respondent No. 3 has raised a technical objection that this revision petition is not competent. Since, his first appeal had been dismissed and decree sheet had been prepared, only second appeal lies. He further stated that judgment, vide which his appeal was dismissed, is not on record of this case and he prayed that revision petition be dismissed.

9. Facts of this cases are not in dispute, It is virtually admitted that the petitioner filed a suit challenging memo dated 11.5.1990. His suit was dismissed. He filed an appeal," which was barred by limitation. It had been asserted by the petitioner in his application for condonation of delay, before the appellate Court, that after passing of judgment by the trial court he, being an illiterate person, asked Clerk of his counsel to move an application for getting certified copy of the judgment passed and that Clerk told him to come on a particular date. It is apparent from the record that his suit was dismissed on 15.6.1995 and he filed appeal on 26.9.1995 that is after about more than three months. It is also apparent from record that application to get certified copy was moved on 15.6.1995 and the same was supplied on 38.6.1995.

10. A perusal of judgment passed by the appellate court below indicates that the petitioner appeared to be somewhat negligent. Be that as it may, litigant is not going to gain anything by filing an appeal at a belated stage. In this case, petitioner was the plaintiff and he was claiming that vide memo under challenge, less amount was shown in his Savings Account. Unless some mala fide and bad intention is attributed to him, mere filing of appeal at a belated stage, will not disentitle him to get his appeal decided on merits. Otherwise also, in this case the delay was not huge. Appellate Court below had dismissed his application for condonation of delay by taking a very strict view of limitation only.

11. Opinion arrived at seems to be very harsh and technical. Expression "sufficient cause" for condonation of delay has been directed to be interpreted liberally by Hon"ble Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , in which it was opined as under:-

"3. The legislature has conferred the power to condone delay by enacting Section

5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court."

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1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a case would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why to every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

To the same effect is the ratio of judgments of Hon"ble Supreme Court in N. Balakrishnan Vs. M. Krishnamurthy, and Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, .

12. So far as the facts of this case are concerned, it is apparent from record that the petitioner had relied upon entries made in his Pass Book to show that he was entitled to get that amount as shown in that Pass Book. It had also come on record that there was some negligence on the part of the petitioner in not applying certified copy of the judgment passed, well in time. However, facts are such that by filing the appeal at a belated stage, he was not going to gain anything. Rather he is a sufferer. In Civil litigation, where opposite party can be compensated by payment of costs, litigation is required to be decided on merits.

13. Counsel for respondent No. 3 has failed to indicate as to what irreparable loss is going to be caused to respondent in case appeal is directed to be heard on merits and in that event rights of respondent can be safeguarded by ordering

appellant to pay costs.

14. Contention of Mr. Bansal that revision petition is not competent is devoid of any force. Initially, petitioner filed appeal in this case. This Court, vide order dated 30.4.2001, opined that second appeal is not maintainable, and the petitioner was given liberty to move an application for treating his appeal as Civil Revision. In the presence of Mr. H.R. Bansal, Advocate order was passed on 23.7.2002 that in view of earlier order passed, appeal be treated as Civil Revision. Above mentioned orders have become final between the parties, as such, objection raised by Mr. Bansal is rejected.

15. In view of reasoning given above, revision petition is allowed. Both order and judgment and decree dated 4.9.2000, passed by appellate Court below, dismissing application of the petitioner for condonation of delay and also dismissing his appeal, are set aside. His application for condonation of delay is allowed. Case is remitted back to the appellate Court below/its successor to decide the appeal of the petitioner on merits. However, this order will be subject to payment of costs of Rupees two thousands.

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