
(2012) 09 P&H CK 0321
In the Punjab And Haryana At Chandigarh
Case No : Case No. : C.R. No. 4771 of 2011

Punjab Small Industries and Export Corporation Limited	APPELLANT
Vs	
Ranbir Singh and Others	RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 09 P&H CK 0321

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

Bench : Single Bench

Advocate : Amit Rawal, with Mr. Deepak Jain, for the Appellant; R.P. Kansal, Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Defendant No. 1 Punjab Small Scale Industries and Export Corporation Limited (appellant before the lower appellate court) has filed this revision petition under Article 227 of the Constitution of India assailing order dated 15.04.2011 (Annexure P-2) passed by learned District Judge, Sangrur, thereby dismissing petitioner's application for condonation of delay of a little more than six months in filing the first appeal. The petitioner alleged in its application that concerned Section Officer (Legal) Mr. J. S. Jaffra had retired on 31.03.2010 and his successor Mr. Mohinder Pal - Section Officer (Legal) visited the petitioner's counsel on 15.09.2010 to inquire about the first appeal and then learnt that appeal had not been filed. It was holiday on 16.09.2010. Mr. Mohinder Pal checked the record of Mr. J. S. Jaffra on 17.09.2010 and found that "Grounds of Appeal" were lying in the record and had not been sent to the counsel. Thereupon, first appeal was filed on 18.09.2010, although limitation period for filing the same was up to 14.03.2010.

2. The application was resisted by respondents No. 1 and 2. Averments made in the application were controverted by filing reply.

3. Mr. Mohinder Pal - Section Officer (Legal) of the petitioner appeared in the witness-box and made statement according to the averments made in the application for condonation of delay. No evidence was led by the contesting respondents. Learned District Judge, vide impugned order (Annexure P-2), dismissed the petitioner's application for condonation of delay. Hence this revision petition.

4. I have heard learned counsel for the parties and perused the case file.

5. Counsel for the petitioner reiterated the version pleaded by the petitioner in its application for condonation of delay in filing the first appeal. On the other hand, counsel for respondents No. 1 and 2 contended that the petitioner pleaded that delay occurred on account of retirement of the then concerned Section Officer (Legal) Mr. J. S. Jaffra, whereas limitation period for filing the first appeal had expired while Mr. Jaffra was still in service. Counsel for respondents No. 1 and 2 has also relied on judgment of Hon'ble Supreme Court namely P. K. Ramachandran vs. State of Kerala reported as 1998 (7) JT 21 and also two judgments of this Court namely Punjab State etc. vs. Onkar Nath and another reported as 1999 (1) PLJ 94 and Kulwant Kaur vs. State of Punjab reported as 1999 (1) R.C.R. (Civil) 474 to contend that there is no sufficient ground to condone the delay in filing the first appeal.

6. I have carefully considered the rival contentions.

7. Petitioner-Corporation is State Government Undertaking. It has come in evidence that its concerned Section Officer (Legal) Mr. J. S. Jaffra retired on 31.03.2010. However, he failed to take necessary steps to get the first appeal filed within limitation, although the limitation period expired while Mr. Jaffra was still in service. Consequently, the delay occurred because non-filing of the appeal did not come to the notice of Mr. Jaffra's successor Mr. Mohinder Pal. Evidence of Mr. Mohinder Pal in this regard stands un rebutted. Contesting respondents have not led any evidence in rebuttal. In these circumstances, ends of justice would be met if the delay in filing the first appeal is condoned, on payments of costs.

8. It is correct that limitation period for filing the first appeal expired while Mr. J. S. Jaffra was still in service. However, substantial period of delay occurred after his retirement because non-filing of the first appeal did not come to the notice of Mr. Jaffra's successor Mr. Mohinder Pal. Judgments cited by learned counsel for contesting respondents are not attracted to the facts of the instant case. In the cases of Kulwant Kaur and P. K. Ramachandran (supra), there was inordinate delay of 576 days and 565 days respectively in filing the appeal. However, in the instant case, the delay is of much lesser duration being delay of 06 months and 04 days only and there is some explanation for the said delay also. Judgment in the case of Onkar Nath (supra) also does not help the contesting respondents. According to the said judgment, some latitude may be shown to the State for the purpose of condoning the delay. In the instant case, petitioner is instrumentality of State. It was observed in the case of Onkar Nath (supra) that such latitude in

favour of State pre-supposes bona fide act and responsible attitude on the part of State and its officers. In the instant case, there was no mala fide on the part of the petitioner-Corporation and its officers in filing the first appeal belatedly. As regards responsible attitude of its officers, there might have been some negligence, but it cannot be said that there has been complete irresponsibility on their part. In such matters, holistic view has to be taken by considering all the facts and circumstances of each case. No hard and fast or rigid rule of law can be laid down in this regard. Matter of condonation of delay is more a matter of fact than a matter of law.

9. For the reasons aforesaid, I find that taking into consideration all the circumstances of the case, delay in filing the first appeal by the petitioner should be condoned on payment of costs.

10. Accordingly, the instant revision petition is allowed. Impugned order (Annexure P-2) passed by learned District Judge, Sangrur is set aside and delay in filing the first appeal by the petitioner is condoned, subject to payment of Rs. 15,000/- as costs precedent. First appeal is restored to the files of the District Judge. Parties are directed to appear there on 16.10.2012. Counsel for respondents No. 1 and 2 states pursuant to order dated 21.02.2012 that there is no change in the address of respondents No. 1 and 2 and they continue to reside at the address already given.