
(1994) 05 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 2931-C of 1993 in Regular Second Appeal No. 1980 of 1993

Punjab State Electricity Board and Another

APPELLANT

Vs

Nachhattar Singh

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5

Citation : (1994) 107 PLR 709

Hon'ble Judges : S.K. Jain, J

Bench : Single Bench

Advocate : J.S. Toor, for the Appellant; H.C. Arora, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Jain, J.—This is an application u/s 5 of the Limitation Act read with Section 151 C.P.C. for condoning 77 days delay in filing the Regular Second Appeal and that too, without the copy of the decree-sheet. A further prayer has been made for condoning the delay of 121 days in filing the decree-sheet.

2. The condonation of delay is sought on the ground :-

(i) that after the decision of the case the XEN and the Superintending Engineer concerned had sent the copy of the judgment of the appellate Court to the Head Office for obtaining legal opinion as to whether the Regular Second Appeal should be filed or not;

(ii) that the Law Officer gave his opinion dated 19.7.1993 for filing the appeal alongwith an application for condonation of delay : and

(iii) that un-precedented floods had further caused in receiving the legal opinion alongwith the copy of the judgment from the Head Office.

3. This application had been contested stoutly on behalf of the respondents.

4. I have heard the learned counsel for the parties.

5. No ground, much-less sufficient and convincing, has been made out for condonation of delay. Impugned order was pronounced on 2.1.1993. The functionaries of the Board had been most negligent in having applied only for the supply of the copy of the judgment and not that of the decree-sheet in the first instance while they definitely knew that certified copy of the decree-sheet was also required for filing the Regular Second Appeal. The copy of the judgment alone was applied for on 4th of January, 1993. It was ready on 16th of January, 1993. So, the appeal could have been filed within the prescribed period of limitation of 90 days by 17th May, 1993. The certificate issued on behalf of the Deputy Commissioner, Sangrur, placed on the record shows that there had been 163 OML of rain fall during the period with effect from 8th July, 1993 to 10th July, 1993 followed by Hoods, which means that the floods had come two months after 17th May, 1993, the Just date of filing the Regular Second Appeal within time. But for the reasons best known to the functionaries of the Board, the Regular Second Appeal was filed on 2nd of August, 1993 and that too without the copy of the decree-sheet.

6. The copy of the decree-sheet was applied for on 21.7.1993. It was ready and received on 22.7.1993, No explanation has been given as to why the certified copy of decree-sheet was not applied for on 4.1.1993 when application for supply of the certified copy of the judgment was submitted.

7. Affidavit of Shri Dalip Singh XEN, in support of the application for condonation of delay is nothing but the reproduction of the grounds taken in the application. In para No. 3 of his affidavit he has stated that the delay was caused in the Head Office at Patiala but no affidavit of any Officer/Official/Law Officer of the Head Office has been placed on record giving the explanation for the cause of the said delay. In the above mentioned affidavit it is not mentioned as to when the copy of the judgment was delivered in the office of the XEN/Superintending Engineer and when it was sent to the Head Office at Patiala. The date of its receipt in the Head Office and the one on which it was sent to the Head Office for filing the Regular Second Appeal have not been given.

8. There is another aspect of this matter. The copy of the decree-sheet was applied for 21.7.1991. It was ready and received on 22.7.1993 but even thereafter it took about 10 days in filing the appeal.

9. From the above facts and circumstances, it is apparent on the face of the record that the functionaries of the Board are guilty of gross negligence from the very beginning in not applying for the certified copy of the decree-sheet alongwith that of the judgment and in not filing the Regular Second Appeal within time. It is also evident that the story of unprecedented rains and floods has been introduced in order to make an effort to explain the delay but as mentioned hereinbefore, the certified copy having been obtained on 16.2.1993, the time had started running against the Board from that date and the Regular Second

Appeal could be filed well within the period of 90 days of limitation on or before 17.5.1993 i.e. two months ahead of the date of the unprecedented rains and floods in the area. It is true that in an application for condonation of delay "sufficient cause" should receive a liberal construction so as to advance substantial justice. But in the instant case, the appellant-Board does not deserve any such consideration for the reasons mentioned hereinbefore.

10. No sufficient cause has been made out for condoning 77 days delay in filing the appeal and 121 days delay in filing the decree-sheet is made out. This application is, therefore dismissed.