
(2014) 02 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2164 of 2013 (O&M)

State of Haryana

APPELLANT

Vs

Om Parkash

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Citation : (2014) 3 RCR(Civil) 912

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Gagandeep Singh Wasu, Addl. A.G, Advocate for the Appellant;
Subhash Ahuja, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sabina, J.—This petition has been filed challenging order dated 10.5.2012, whereby, application moved by the State for condonation of delay in filing the appeal was rejected. Learned State counsel has submitted that initially the District Attorney had given the opinion that no appeal was liable to be filed. However, the Legal Remembrancer opined that the appeal should be filed and due to this reason, the delay in filing the appeal occurred and was liable to be condoned.

2. Learned counsel for the respondent, on the other hand, has vehemently opposed the petition and has submitted that the State was bent upon harassing the respondent. Trial Court had rightly decreed the suit of the respondent. The State had failed to explain the delay in filing the appeal.

3. In the present case, respondent had filed a suit for declaration that he was liable to be regularized w.e.f. 1.12.1989. Suit filed by the respondent was decreed by the trial Court vide judgment/decreed dated 21.10.2011. Aggrieved against the said judgment/decreed, State preferred an appeal. Along with the appeal, an application was filed by the State for condonation of delay in filing the appeal. Vide the impugned order dated 10.5.2012, application filed by the State

seeking condonation of delay in filing the appeal was dismissed.

4. The Apex Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, had held as under:-

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 cause 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 not 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."

5. Case of the State was that the delay in filing the appeal had occurred due to the legal formalities. Learned State counsel has submitted that initially the District Attorney had given the opinion that no appeal was required to be filed but later Legal Remembrancer gave the opinion that the appeal was liable to be filed.

6. Thus, in the present case, delay in filing the appeal had cannot be said to be intentional. Moreover, in case the application for condonation of delay in filing the appeal is allowed, the appeal filed by the State would be disposed of on merits. Since, in the present case, the delay in filing the appeal could not be said to be intentional or deliberate, the application seeking condonation of delay in filing the appeal was liable to be allowed.

Accordingly, this petition is allowed. Impugned order dated 10.5.2012 is set aside. Consequently, the delay in filing the appeal is condoned. The First Appellate Court is directed to dispose of the appeal on merits.