
(2010) 04 P&H CK 0170
In the Punjab And Haryana At Chandigarh

State of Punjab and Others	Vs	APPELLANT
Asha Rani and Others		RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 134
Limitation Act, 1963 — Section 14, 5

Citation : (2010) 04 P&H CK 0170

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—This Second appeal is filed to impugn the judgment dated 10.11.2003 passed by the Additional District Judge, Sangrur, This appeal, thus, has been filed with a delay of 1521 days. Application u/s 5 for condoning this delay is also filed. Notice in this application was issued. The respondents have filed reply, contesting the averments made in the application.

2. Justification to ask for condonation of delay is on the ground that earlier Civil Revision was filed against the judgment dated 10.11.2003, which was permitted to be withdrawn on 21.5.2007, with liberty to file the present Regular Second Appeal. Accordingly, it is stated that there is delay in filing the Regular Second Appeal. It is further disclosed that T.P.M to file the R.S.A against the judgment dated 10.11.2003 was sent to the District Education Officer on 11.1.2008. District Education Office then discussed the case with the office of Advocate General on 21.1.2008. Department prepared a draft reply and submitted to the office of Advocate General on 27.2.2008 and the Regular Second Appeal was filed on 8.4.2008. This was returned with an objection that the appeal was barred by limitation. The Department was then required to file an affidavit seeking condonation of delay. The draft was prepared and got wetted from the A.G. Office on 14.5.2008 and filed in the Court on 19.5.2008. The delay is, thus, explained to pray for condonation of the same.

3. In the reply filed, respondent Asha Rani has brought out the correct factual position. The suit was decreed on 30.8.2000. The appeal against the same judgment was filed on 10.11.2003 with a delay of 15 months alongwith the application for condonation of this delay. The application for condoning this delay in filing the 1st Appeal was dismissed by the Additional District Judge, Sangrur. The appeal was also dismissed. Against this order dated 10.11.2003, the appellant filed a Revision Petition No. 3135 of 2004. There was 75 days delay in filing the revision. The respondents appeared and challenged the maintainability of the revision petition and the same was got dismissed as withdrawn by the appellants on 21.5.2007. Still, the present Regular Second Appeal was filed only on 19.5.2008 and, thus, there was an overall delay of 1521 days in filing the Regular Second Appeal.

4. The amount in question and in dispute is Rs. 71,587/-. This amount alongwith interest has already been paid and received by the respondents. The amount was being claimed on account of medical reimbursement.

5. Will it still be fair for the State to contest this case after ten years of the date when the suit was decreed. The appellate order impugned in the RSA is dated 10.11.2003. The first appeal was filed with a delay of 15 months. No reasons are forthcoming to explain this inordinate delay in filing the first appeal. To succeed, the appellant- State would require to come clean to explain this delay and only then the impugned order may call for interference. There is no justification advanced in this regard in the Regular Second Appeal.

6. In fact, this delay was required to to explained while filing the revision which itself was filed with a delay of 75 days. The revision was got dismissed as withdrawn on 21.5.2007. Still, nearly one year was taken to file the Regular Second Appeal. The explanation in this regard is routine like moving of file from one seat to another. There is, thus, no valid and sufficient justification to explain the delay. In any case, no explanation is given for 15 months delay in filing the first appeal. Thereafter, the appellant chose a wrong forum and wrong remedy before this Court.

7. When this case came up for arguments on 8.3.2010, the State counsel prayed for time to file some better affidavit to explain this inordinate delay. One opportunity was granted but still better affidavit is not filed. To be fair to the State counsel, he was having an affidavit with him and sought permission to place the same on record. His prayer to hand over the affidavit in the Court was not accepted and he was given an option to file the affidavit in the Registry subject to payment of some costs. The counsel, however, opts to make submissions on the basis of available material on record.

8. There is no justification or sufficient cause shown to explain this delay in filing the first appeal and then for choosing the wrong remedy. Section 14 of the Limitation Act lays down the principle that the period during which the person was pursuing remedy before a Court should be excluded for computing the period

of limitation in cases where the suit is filed in a wrong Court. This provision may not be applicable to appeals but in exercise of discretion u/s 5 of the Limitation Act, Courts may be guided by the provisions of Section 14, which does not apply to appeals. (See Kumudini Ray and Others Vs. Kamala Kant Sen, followed in Official Liquidator v. Ramkrishna Piliyai 1969 Ker LJ 748). This plea, still, may not be available in cases where the party has chosen altogether different remedy before a Court having jurisdiction to grant relief. (See Lal Bihar Lall and Another Vs. Bani Madhava Khatri and Others, .

9. The prayer has to be considered u/s 5 of the Limitation Act. The State had battery of lawyers in Advocate General Office to advice about the remedy and Forum but still it was decided to file a revision where second appeal was maintainable. Legal advisor's mistake by itself is no test of bonafides. This mistake must be bonafide i.e. legal adviser should have acted with due care and attention. Office of Advocate General, who is the legal mentor of the State Government, had earlier chosen to file a revision. This legal advice may have misled the appellant to file the same but general submission, seeking shelter under the umbrella of legal advice is not always a sufficient protection in a Court. Reference may be made to the case of Ramkrishna Piliyai's case (supra) where the Court discountenanced erroneous legal advice as always sufficient explanation. It was observed that even if a party acted on a legal advice that would be no excuse. Reference here also may be made to the observation of Brett L.J. in Highton v. Treherne (1878) 48 LJQB 167 where it is observed that when an advice betrays negligence or ignorance or gross want of legal skill, then it would be no excuse. As was further observed, in such cases the party has a remedy against his legal advisor but meantime, must suffer. In Surendra Mohan Rai Choudhury Vs. Mohendra Nath Banerjee and Others, , it is held that there is no authority for the view that a mistake of a legal adviser, however, gross and inexcusable, if bonafide acted upon by a litigant will entitle him to the protection of Section 5 of the Limitation Act. Even in State of U.P. Vs. Col. Sujan Singh and Others, , the obvious mistake made by the State counsel and acting on that patently mistaken advice did not receive the approval of the Hon'ble Supreme Court. The Supreme Court observed as under: The reason for the delay given in the affidavit is that the Law Officer was of the opinion that the application for a certificate was maintainable under Article 134(1) of the Constitution. We do not see any justification for this opinion. There is no conflict of judicial opinion on this question. The only question that was before the Law Officer was whether the order sought to be appealed from was a final order. The order ex facie was an interlocutory order and so far as the Government of U.P. Was concerned it could not possibly be held that any of its rights had been affected by that order. In the circumstances we cannot hold that a wrong legal advice is a sufficient ground for excusing the delay. Accordingly, it can be said that reckless and wrong legal advice can not be basis for excusing the delay into which a party has been tripped. In some of the cases, the Court may have taken a generous view as can be seen from the observation made in Lala Mata Din v. Narayanan AIR 1970

Supreme Court 1593. Such application filed on this basis must be supported by an affidavit of counsel. Ignorance of law being no excuse, it can not be pressed as ground to seek condonation. A bonafide mistake of law may, however, be held sufficient ground for treating the proceedings to be in good faith. However, proceedings contrary to clearly expressed provision of law can not be said to be initiated in good faith.

10. The circumstances in this case are such that the appellant ought to have known law, as they had expert legal advice available. The affidavit of the State counsel for excusing the delay is hardly complete or concrete. The application filed is u/s 5, which may not allow such exclusion absolutely. Section 5 permits excuse as a matter of discretion. No sufficient cause is made out from the reasons as disclosed in the application. The mistake in pursuing revision can not be considered bonafide.

11. Even if it is assumed that time during which revision was pending, can be excluded, then it would only apply to the period for which it actually remained pending and this period alone can be excluded. The appellants have still to explain delay on their part of 15 months in filing the first appeal. Then there is no explanation given for filing the revision with a delay of 75 days, which ultimately led to delay of nearly 5 years in filing the Regular Second Appeal. The delay has only been explained from the date the revision was got dismissed as withdrawn to the date of filing the appeal. Despite opportunity, no action has been taken to offer explanation in this regard. The appeal, thus, is liable to be dismissed only on the ground of delay, which has not been sufficiently explained.

12. The appellant-State with its might had dragged the respondents in one litigation after another without any justifiable cause from one Court to another. The respondent-plaintiffs had to file this suit for claiming medical reimbursement. The cause is made out to compensate the respondent-plaintiffs and to burden the appellants for wasting the time of Courts.

13. The application and the appeal, thus, would deserve to be dismissed with costs assessed as Rs. 10,000/- and it is so ordered.