

(2000) 08 P&H CK 0177
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5640 of 1999

The State of Haryana and Others

APPELLANT

Vs

Wazir Chand

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2001) 2 CivCC 443 : (2001) 1 ILR (P&H) 358 : (2000) 126 PLR 697 : (2000) 4 RCR(Civil) 681

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : S.S. Mattewal, A.A.G, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Vide order dated 31.7.1999, Additional District Judge, Hisar refused to condone delay in filing the appeal by the State of Haryana and dismissed their application u/s 5 of the Limitation Act for condonation of delay. Vide another order of the same day, he went into the merits of the appeal and dismissed it on merits. State of Haryana has come up in revision to this Court against the refusal to condone delay and the dismissal of appeal on merits by the Additional District Judge, Hisar.

2. Learned Additional Advocate General, Haryana submits that when Additional District Judge, Hisar had dismissed the application of the State of Haryana filed u/s 5 of the Limitation Act for the condoning delay, Additional District Judge became functus officio and he could not have touched merits of the appeal at all. He submits that dismissal of the appeal by Additional District Judge on merits is without jurisdiction and is nonest. I think, the submission made by learned Additional A.G. Haryana is correct. After the Additional District Judge had refused to condone delay, all that he could have done was to say that in consequence of the prayer of the State of Haryana for condoning delay having been declined, the appeal is dismissed.

3. Appeal was filed by the State of Haryana after delay of 27 days. In support of the prayer for condoning delay, State of Haryana has alleged that Legal Remembrancer, Haryana vide order dated 30.12.98 had instructed District Attorney to file appeal and the District Attorney had vide order dated 12.1.99 asked the Divisional Forest Officer, Hisar to send certified copy of the judgment and decree. Appeal was filed on 25.1.99 and 13 days time was taken after 12.1.99. Learned Additional A.G. Haryana submits that some time is taken in sending the case through various functionaries of the State and, therefore, delay in filing the appeal is caused. He submits that the decision that appeal be filed is not to be taken by an individual. It is taken after the matter passes through several hands. If decision to file appeal is to be taken by an individual, there can be no delay but if the decision to file the appeal is taken after the matter passes through several hands, some delay is likely to take place and that delay should be condoned and if that delay is not condoned, public interest will suffer. It was held in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, that "the doctrine of equality before law demands that all litigants including the State as litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step motherly treatment when the State is the applicant praying for condonation of delay. In fact on account of an impersonal machinery and the inherited bureaucratic methodology imbibed with the note-making, file pushing, and passing on the buck ethos, delay on part of the State is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. So also the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles a decision on merits." It is true that the State is like any other litigant. If the State is like any other litigant, State cannot be given preferential treatment. Every litigant whether it be State or an individual deserves the same treatment. For determining whether there is sufficient cause in filing the appeal beyond limitation, the same yardstick should not apply to the State which yardstick is applied to the case of any other individual as when appeal is to be filed by the State, the decision to file the appeal is not taken by an individual at his own level. Decision to file an appeal is taken after the matter passes through several hands. When the matter passes through several hands, we cannot lose sight of the fact that some delay may take place at the level of one or the other official. It was held in *Punjab State and Anr. v. Kultar Chand* 1991 SCT 28, that "the State has to act through various functionaries. Till the Legal Remembrancer grants the permission to the concerned department of the State to file appeal against a particular order/judgment, the department cannot of their own file the appeal. In the instant case, the delay was occasioned because the Legal Remembrancer took sufficient time to give opinion in the matter and grant sanction to the concerned department to file the appeal. No negligence can be attributed to the petitioners. Refusal to condone delay has resulted in miscarriage of justice because the lis inter parties will not be adjudicated upon

on merits but in fact will go in default merely because the petitioners did not file the appeal within time.

4. If delay is not condoned in filing the appeal, a good cause on merits may get defeated and injustice may get perpetuated by delayed filing of the appeal. There was no gain to the State by the delayed filing of the appeal. Merits of the appeal would not have improved merits of the appeal would remain as they were, if the appeal had been filed in time.

5. For the reasons given above, this revision is allowed. Delay in filing the appeal is condoned. Dismissal of the appeal on merits by Additional District Judge, Hissar is also set aside. District Judge, Hisar is directed to hear this appeal himself on merit or arrange the hearing of this appeal by another Additional District Judge posted with him at Hisar for decision on merits.