

(2021) 10 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 4283, 4285 Of 2021

Uttar Haryana Bijli Vitran Nigam Limited And Another

APPELLANT

Vs

Poonam Rani

RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2021) 10 P&H CK 0027

Hon'ble Judges : Arun Monga, J

Bench : Single Bench

Advocate : Ankit Midha

Final Decision : Dismissed

Judgement

Arun Monga, J

1. Applicants are in second appeal before this court, aggrieved against concurrent findings rendered vide trial court and upheld by the first Appellate court. Vide judgment and decree dated 22.08.2017 passed by learned Additional Civil Judge (Sr. Division), Karnal, Uttar Haryana Bijli Vitran Nigam Ltd. has been directed to refund an amount of Rs.1,76,283/- towards penalty and compounding fees of Rs.20,000/- deposited by the plaintiff with interest @ 6% per annum. Trial court decree has been upheld vide first Appellate Court judgment and decree dated 06.08.2019 by the court of learned Additional District Judge, Karnal.

2. There is a delay of 132 days in filing the instant appeal. Narrative of reasons pleaded in the accompanied condonation application under Section 5 of the Limitation Act, is as under: -

"2. That the present counsel was engaged by the Legal Remembrancer, Power Utilities, Haryana, Shakti Bhawan, Sector 6 Panchkula and part documents were supplied. After receiving the documents, the appellant was informed that certain other documents were required for filing of the appeal, which were provided later on. As soon as the documents were provided, the counsel proceeded to draft the

appeal. Once the appeal was drafted, a nationwide lockdown was imposed due to the Covid-19 pandemic and the Hon'ble Courts throughout the country were closed and thereafter only restricted matters were taken up and the same is now being filed after a delay of 132 days.

3. The said delay in filing the appeal is bona fide and unintentional and it occurred only because of the circumstances explained above."

3. The aforesaid explanation given in the application for condonation of delay does not inspire any confidence. Reason given therein essentially is that after engaging the counsel, documents were supplied. After supplying the documents, it was informed that certain other documents were required which were provided later on and further steps were taken. In the application, neither any specific dates are given nor even an attempt therein to explain each day's delay, a sine qua non.

4. Perusal of the application would reveal that not only the application has been filed in a mechanical manner, but even the mandate of law, which envisages that each day's delay, post limitation expiry, has to be explained, is completely amiss in the averments of the application. No worthwhile explanation has been given for the same.

5. First Appellate court's judgement is dated 06.08.2019, copy was applied on 08.08.2019 and supplied on 16.08.2019 and lock down was declared on 24.03.2020. Part delay may have been caused due pandemic slowdown, which though seems justifiable, but prior thereto appeal had already become time barred.

6. Flimsy grounds have thus been taken to explain the delay.

7. Be that as it may, settled proposition of law being, that by virtue of limitation, vested rights with of litigant cannot be treated in such careless manner, so as to divest him of the same on as flimsy grounds as pleaded in the application herein. In this context, reliance may be had on the Apex Court judgment rendered in Ramlal and others Vs. Rewa Coalfields Ltd. reported as 1962 AIR (SC) 361. Relevant extract of the same is reproduced here-in-below:

"7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and

discretion in trial behalf should be exercised to advance substantial justice."

8. No doubt, a discretion has been vested with court to condone the delay, provided sufficient cause thereof has been made out. I have already given my mind that reasons given in the application do not really make it out to be a sufficient cause. That apart, having perused the purported justification, I may hasten to add that very mechanical reasons have been given for the same. Almost suggestive, as if, to seek condonation of delay is a matter of right, regardless of the reasons qua the same.

9. It is high time that a lax litigant pays the price for casual and nonchalant approach in instituting time bound cases in the Courts, particularly, as enlightened a litigant as Uttar Haryana Bijli Vitran Nigam Ltd. Herein, a perpetual litigant due to nature of its business, and legally backed up with an entire vertical of department's in house law officers giving them advice at every step, apart from worthy outsourced panel lawyers. Despite the same, if delay is caused at the cost of forfeiture of vested legal right of the opposite party, the same is to be deprecated. Delay is thus akin to a self-goal. Consequences thereof have to be suffered and most certainly, there cannot be any premium on a self-goal.

10. In fact, going a step further, even sufficiency of cause, per se, does not result in any indefeasible legal right. Reference once again may be had on "Ramlal" judgment *ibid*, based whereupon, His Lordship R.F. Nariman, J. (as he then was), speaking for Apex Court in Government of Maharashtra (Water Resources Department) versus M/s Borse Brothers Engineers & Contractors Pvt. Ltd., 2021 SCC OnLine SC 233, observed as below: -

"60. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 as follows:

It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the Court is dealing with applications made under S.

14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of SS. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of S.14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under S. 5 without reference to S.14."

11. As an upshot of the aforesaid, no grounds to interfere for condonation of delay are made out. The application for condonation of delay is dismissed.

12. Since the application is being dismissed on limitation, no ground to hear the main case on merits is made out. Consequently, the appeal is also dismissed. Pending application, if any, shall also stand disposed of.