

*Before G.S. Sandhawalia & Vikas Suri, JJ.*

**JUG LAL**—*Petitioner*

*versus*

**STATE OF HARYANA AND OTHERS**—*Respondents*

**LPA No.1246 of 2017**

March 15, 2022

*Constitution of India, 1950—Arts.226 and 227—Letters Patent Appeal—Punjab and Haryana High Court Rules and Orders—Limitation Act, 1963—S.5—Delay in Appeal—Order of writ Court affirmed—Impugned judgment passed on 07.05.2013—Certified copy received on 28.05.2013—First appeal filed and objections received 07.10.2016—Objections of first appeal not removed within prescribed period of 40 days, inspite of fact that appeal was filed after a period of 3 years and 5 months—Another appeal on the same judgment filed on 12.07.2017—Held, once the objections which had been raised on an earlier occasion and not been removed in the prescribed period, the present appeal filed in 2017 is not maintainable and amounts to filing of 2<sup>nd</sup> appeal on the same cause of action which is not permissible—LPA dismissed.*

*Held that* in such circumstances, this Court is further dissuaded by the conduct of the applicant who was negligent at all points of time. Resultantly, no ground is made out to interfere with the impugned judgment dated 07.05.2013 passed by the learned Single Judge also on merits.

(Para 9)

Neeraj Kumar, Advocate, *for the petitioner.*

Palika Monga, DAG, Haryana, for respondent Nos. 1 & 2.

Anurag Goyal, Advocate, for respondent No.3.

**G.S. SANDHAWALIA, J.**

(1) Present letters patent appeal is directed against the order dated 07.05.2013 passed by the Learned Single Judge in CWP-4828-2013. The same is barred by delay of 1496 days which is sought to be justified by filing CM-2632-LPA-2017 under Section 5 of the Limitation Act.

(2) Said application has strongly been opposed by filing reply on behalf of respondent No.3 that there is inordinate delay of more than 3 years and secondly that the present appeal is a second appeal which has been filed.

(3) A perusal of the application would go on to show that the plea taken for condoning the delay is that after the judgment was passed on 07.05.2013, the same had been applied for and was received on 28.05.2013. The applicant was under the impression that there is a vacation in this Court in the month of June and he had thereafter, on opening of the Court, contacted his counsel and the appeal had been prepared and the delay had occurred. It has specifically been mentioned that the appeal was filed vide diary No.1113495 and it is the case of the applicant that an objection was raised by the office on 07.1.2016 and thereafter, the appeal could not be traced anyway in the typing room, home etc. A fresh appeal was thereafter filed. Accordingly, it is pleaded that the case should be decided on merits rather than shutting it out on technicality of delay by placing reliance upon several judgments.

(4) A perusal of the order dated 04.04.2018, which has now been placed on record as Annexure A-1 along with the reply filed to the application for condonation of delay, would go on to show that the time barred appeal was put up before the Learned Single Judge. It was noticed that inspite of the office putting up the note, no action had been taken on the objections which had been raised on 07.10.2016 when the appeal had been filed. The Advocates had been requested to collect their cases lying with the objections upto 31.12.2016 but nothing had been done and the appeal had been consigned to the record, while placing reliance upon Rule 9, Chapter 1, Part-A, Volume V, Punjab and Haryana High Court Rules and Orders. Said order reads as under:

“The aforesaid appeal was filed on 07.10.2016 by Sh. Neeraj Kumar, Advocate. The Registry had raised objection on the case file on 07.10.2016.

As per Rule 9, Chapter 1, Part-A, Volume V, Punjab and Haryana High Court Rules and Orders, the petition on which objection have been raised by the Registry is to be taken back by the counsel/party, who filed it, to be re-filed within a total period of 40 days. The same was not taken back for re-filing after removal of objections. On failure, the case is to be listed before the Court for orders. Note was published by the Registry in the cause list w.e.f. 08.02.2018

to 31.03.2018, wheerby the advocates were requested to collect their all cases lying with objections, which were filed upto 31.12.2016 for re-filing after removal of objections.

It was further notified that all pending cases of this type will be listed in Court for appropriate order.

The case was shown in the cause list for 04.04.2018. No one was present.

Keeping in view the aforesaid factual matrix, no further order is required to be passed. The file be consigned to the record.”

(5) A perusal of the paper-book would also go on to show that the present appeal was filed on 12.07.2017 which in fact amounts to filing of second appeal on the same cause of action which would not be permissible. Once the objections which had been raised on an earlier occasion had not been removed within the prescribed period, the present appeal would not be maintainable.

(6) Another aspect which is also to be noticed apart from the fact that no action was taken to remove the objections within the prescribed period of 40 days is that the appeal itself was filed after a period of 3 years and 5 months on 07.10.2016. The same has apparently not been explained in the application for condonation of delay and therefore, in the absence of any sufficient cause having made out and once there is gross negligence and inaction, the applicant has lost his remedy of appeal. It is settled principle that fixing the time-limit for litigation and fixing a life-span for legal remedies is for general welfare and for the purpose of advancing substantial justice. Only where there is plausible and sufficient explanation held out, this Court would condone the delay which also has to be reasoble. There has to be a bona fide effort on the part of the litigant which in the present case seems to be none which could persuade this Court to take a liberal view.

(7) In *Darshan Singh* versus *Surjit Singh*<sup>1</sup>, this Court while dealing with the appeal which was presented within limitation after removal of defects, it was held that in the absence of any valid reason, re-filing which was done after a period of 1 year and 5 months, of delay was not liable to be condoned. The earlier division Bench judgment of

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<sup>1</sup> 2008 (2) PLR 336

this Court in *Prithvi Raj versus Smt. Kamal Kanta*<sup>2</sup> was considered wherein even the delay of 3 months in re-filing had been held not to be condonable. Relevant portion of the judgment reads as under:

“4. Period of limitation has been prescribed under Rule 5 of the Rules and Orders of Punjab and Haryana High Court, Volume V Chapter I, Part A which deals with judicial business. This Chapter deals with “the Presentation and Reception of Appeals, Petitions and Applications for Review and Revision”. Rule 5 deals with the re-filing of the appeals and reads as under:

“5. Amendment.- (1) The Deputy Registrar may return for amendment and re-filing within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be fixed by him any memorandum of appeal for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the Memorandum of appeal is not amended within the time allowed by the Deputy Registrar under Sub-Rule (1), it shall be listed for orders before the Court.”

From the reading of the aforesaid Rules, it appears that the maximum period of limitation prescribed under the Rules is 40 days. Therefore, whenever an appeal is returned to a party for re-filing, it must be re-filed within 10 days and 40 days in aggregate meaning thereby that the maximum period for re-filing of appeal is 40 days. In the present case from the report of the Registry, it appears that though appeal was presented within limitation, but it was returned on 27.5.2005 asking the appellant to page mark the paper-book and also file the fair typed copy of the judgment. Appellant should have removed this defect and re-filed the appeal within 10 days and in any case not beyond 40 days. Otherwise also, the defect pointed out did not require much time.

This appeal was re-filed after lapse of one year four months and 22 days i.e. 509 days. Main ground urged in the application is unfortunate death of brother-in-law of the applicant/appellant who died on 21.1.2006, according to the averments made in the application. Even if the period upto

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<sup>2</sup> 1980 PLR 155

his death and further moratorium of one or two months is given, still there is absolutely no explanation for not re-filing the appeal within reasonable time. Appeal has been preferred after about nine months after the death of applicants brother-in-law. Thereafter even if the entire period for rectification of further objections is allowed, appeal was again returned to the applicant on 22.3.2007. It has been re-filed 16.4.2007. There is absolutely no valid reason for retaining the file for a period of one year and about five months initially. Limitation has been prescribed under the Rules and Orders of the Punjab and Haryana High Court, Volume V Chapter I, Part A which is in the nature of statutory provisions. Rule 5(1) of the said Rules prescribes maximum period of 40 days for re-filing the appeal. Sub Rules (2) of Rule 5 further provides that if the appeal is not amended within time, it be listed before the court orders. The question arises whether the period of limitation prescribed under Rule 5 of the Rules and Orders of Punjab and Haryana High Court, Volume V Chapter I, Part A should be strictly construed meaning thereby whether it is mandatory or directory. Section 3 of the Limitation Act makes it obligatory for the Court to consider the question of limitation, notwithstanding any defence by the other side. Sub Section (1) of Section 3 of the Limitation Act reads as under:

“3(1) Bar of Limitation.- (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.”

5. The rigor of Sub-section (1) of Section 3 of the Limitation Act has to operate, if the appeal is not filed within the prescribed period of limitation. Contention can only be allowed to be raised within the purview of Section 5 of the Limitation act which inter-alia requires that sufficient cause should be shown for not preferring the appeal within the prescribed period of limitation. Rule 5 of the Punjab and Haryana High Court Rules and Orders, Volume V Chapter 1-A, Part A also Game up for consideration before the learned Single Judge of this Court

in the case of Gurbachan Singh v. Shri Mastan Singh etc. (1984) P.L.R. 438 wherein following observations have been made:

“6. It was urged by Shri R.S. Bindra, Senior Advocate that once the appeal is filed, it has to be taken to remain on the record of the Court even if the memorandum of appeal is returned by the High Court to the party for removing certain defects. In his view, unduly long time spent by the petitioner, which has been considered as unexplained in the order dated March 7, 1980, requires to be ignored. Prithvi Raj v. Smt. Kamal Kanta (1980) 82 P.L.R. 155 is a Division Bench decision of this Court which covers this point also. This judgment was relied upon by me in the order dated March 7, 1980 for dismissing the appeal of the petitioner, being barred by time. Prithvi Raj’s case (supra) has been followed in F.A.O. No. 117-M of 1981 Smt. Kusum Lata v. Rakesh Mohan Pathak decided on 10<sup>th</sup> November, 1983. Mr. R.S. Bindra, Senior Advocate, urged that the Rules framed by the High Court, providing a limitation of 40 days for the removal of defects pointed out by the Registry of this Court, should be taken to be of a directory nature. Since once, according to him, a memorandum of appeal is filed under Order 4.1 Rule 1, Code of Civil Procedure, it cannot be rejected on any other ground than the one contained in Order 41 Rule 3 of the same Code. These rules have been made by the High Court to further the ends of justice. A party cannot be given undue latitude in complying with the orders of the Registry to remove the defects pointed out in appeal. The appellant cannot be permitted to move at leisure. If great latitude is given to the litigants, then they might not only take months but years for complying with the orders. The appellant in this case took 85 days to refile the appeal after removing the defects pointed out by the Registry. Such misuses require to be checked.”

In view of the ratio of the aforesaid judgment wherein a Division Bench judgment of this Court has been relied upon, I find that in the present case, delay in re-filing the appeal has not been explained at all what to say

satisfactorily explained. As a matter of fact, there is no explanation for condoning the delay of such a long period in re-filing the appeal. Rigor of Section 3(1) of the Limitation Act will operate. There is no sufficient cause for condoning the delay. This application is accordingly dismissed and consequently the Regular Second Appeal.”

(8) Even otherwise, if one is to see the conduct of the applicant on merits also, the issue also pertains to filing of the writ petition in 2012 after 4 years of retirement on 31.10.2008 to challenge the pay fixed at the time of initial appointment on 20.11.1989 in a specific pay-scale. It was on such account, the Learned Single Judge also did not feel the necessity to grant the benefit of indulgences to the petitioner and dismissed the writ petition at the outset.

(9) In such circumstances, this Court is further dissuaded by the conduct of the applicant who was negligent at all points of time. Resultantly, no ground is made out to interfere with the impugned judgment dated 07.05.2013 passed by the Learned Single Judge also on merits.

(10) Accordingly, in view of the above discussion, there is no merit in the application for condonation of delay and the main appeal, which are hereby dismissed. All pending application(s) are also disposed of, accordingly.

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*Dr. Payel Mehta*