

---

*Before Ajay Kumar Mittal, J.*

ANIL KUMAR,—*Petitioner*

*versus*

MAKHAN SINGH GREWAL,—*Respondents*

*Civil Revision No. 5732 of 2001*

27th February, 2006

*East Punjab Urban Rent Restriction Act, 1949—S.15(1)(b)—Limitation Act, 1963—S. 5—Rent Controller accepting ejectment petition of landlord and ordering eviction of tenants—Tenants filing appeal after the expiry of statutory period of limitation—Delay of 22 days in filing appeal—Appellate Authority on appreciation of evidence led by parties finding that tenants failed to establish that there was sufficient cause to condone the delay—Appellate Authority declining prayer for condoning delay—Appellate authority discarding the testimonies of witnesses on conjectures and surmises—Delay of 22 days in the facts and circumstances cannot be attributed to any malice on the part of the tenants or cannot be said to be intentional or deliberate—Petition allowed, matter remitted to the appellate authority for deciding appeal on merits.*

*Held*, that the approach of the appellate authority while discarding the testimonies of Dr. P.S. Gulati and Subhash Sharma, Advocate is not worthy of acceptance. Shri Subhash Sharma had specifically stated that he did not attend the Court on 10th November, 1999 and thereafter, as his client had not come to call him. Even though, it may be professional misconduct but it cannot be a ground to discard the statement of an Advocate as untrue. Further, the Rent Controller had not marked the presence of Shri Subhash Sharma, Advocate by name but had only noted “counsel for the parties” in the order dated 10th November, 1999 and thereafter. Further order dated 16th November, 1999 passed by the Rent Controller shows that there has been a cutting in recording the presence of the counsel for the parties. Initially, the name of Shri S.K. Pathak, Advocate had been noted for the petitioner and Shri G.S. Sandhu, Advocate had been recorded as counsel for the respondent. This was later on altered as Shri G.S. Sandhu, Advocate for the petitioners and Shri S.K. Pathak,

---

Advocate for the respondent. Obviously, this shows that while recording the presence of counsel for the parties in the order dated 16th November, 1999 an error has crept in and, therefore, the presence of the counsel noted on that date cannot be taken to be conclusive. Thus, it cannot be said conclusively, that Subhash Sharma, Advocate had appeared on 10th November, 1999 and thereafter before the Rent Controller. The appellate authority had, thus, rejected the testimony of Shri Subhash Sharma, Advocate on conjectures and surmises.

(Paras 10 & 11)

*Further held*, that the landlord had not put any question to Dr. P.S. Gulati regarding medical certificate when he had appeared in the witness box, for the reasons best known to him. The said doctor could have explained as to under what circumstances the certificate was issued by him. No weightage thus, can be given to the said certificate and merely on that basis the medical certificate could not be discarded.

(Para 12)

*Further held*, that it has been the specific case of the petitioner that he had been suffering from typhoid and for curing such type of disease, the distance would not matter much. As far as the second limb of observation on this issue is concerned, a person suffering from typhoid who is said to have been accompanied by a person while going to doctor for treatment cannot be expected to divert his mind to pursue his court case and ignore his illness and put his life to risk. Thus statement of petitioner has been illegally discarded by the appellate Authority.

(Para 13)

*Further held*, that the circumstances clearly show that the application for obtaining certified copy of order dated 16th November, 1999 which was applied by the tenant petitioners had not been intentionally trying to delay the proceedings by filing the appeal beyond limitation does not appear to be correct.

(Para 14)

Amit Rawal, Advocate, *for the petitioners.*

M.L. Sarin, Senior Advocate with Sahil Sharma and Vivek Sood,  
Advocates, *for the respondent.*

---

**JUDGMENT**

**AJAY KUMAR MITTAL, J.**

(1) The short question that falls for consideration by this Court in this revision petition is, whether the appellate authority was justified in declining the prayer of the petitioner-tenants for condonation of delay of 22 days, in filing the appeal ?

(2) In order to appreciate the above question, a few facts need to be noticed first.

(3) Respondent-landlord filed a petition against the petitioner-tenants seeking the ejection from the demised premises. The Rent Controller, Ludhiana accepted the petition,—*vide* order dated 16th November, 1999 and ordered eviction of the petitioners. Aggrieved by the eviction order, the petitioners filed appeal before the appellate authority. Since the appeal was filed after the expiry of statutory period of limitation, an application under-section 15(1)(b) of the East Punjab Urban Rent Restriction Act, 1949 (for short “1949 Act”) read with Section 5 of the Limitation Act, 1963 (for short “the Act”) was also filed seeking condonation of delay in filing the appeal. The appellate authority after framing issues and perusing the evidence led by the parties recorded a finding that the petitioner-tenants have failed to establish that there was sufficient cause to condone the delay. The application was thus dismissed and consequently, the appeal was also dismissed as time-barred,—*vide* order dated 8th October, 2001. It is this order of the appellate authority which has been impugned by the petitioner-tenants in the present revision petition.

(4) Mr. Amit Rawal, counsel for the petitioners submitted that the appellate authority fell in error in declining the prayer of the petitioners for condoning the delay. The counsel submitted that Anil Kumar-petitioner had fallen ill on 9th November, 1999 and remained bed-ridden upto 3rd December, 1999. He, however, contacted his counsel on 4th December, 1999 and it was only then he came to know that his counsel had not appeared before the Rent Controller from 10th November, 1999 to 16th November, 1999 and consequently ejection order had been passed on 16th November, 1999. The counsel further submitted that the petitioner-tenants were represented by their counsel Shri Subhash Sharma, Advocate, but on inspection of record, it transpired that the presence of one Shri S.K. Pathak, Advocate

---

had been marked as their counsel whereas in fact, the petitioners had never engaged him as their counsel. The counsel thus specifically submitted that till 4th December, 1999, the petitioners had no knowledge of the ejection order. After obtaining certified copy of the ejection order, the appeal was filed on 24th December, 1999 and consequently a delay of 22 days had occurred in filing the appeal. On the strength of these facts the counsel submitted that the delay in filing the appeal before the appellate authority was not intentional and thus deserved to be condoned.

(5) Counsel for the petitioners next submitted that the petitioners had initially filed Civil Revision No. 831 of 2001 and the matter was remanded back to the appellate authority for deciding their application afresh after hearing the parties,—*vide* order dated 10th July, 2001, Annexure P-2. The counsel submitted that the matter had been remanded for considering two aspects, firstly whether nobody had appeared on behalf of the petitioners before the Rent Controller from 10th November, 1999 to 16th November, 1999 and secondly in case the counsel Shri Subhash Sharma had been negligent in not appearing, then who had appeared on behalf of the petitioners from 10th November, 1999 to 16th November, 1999. The counsel submitted that the appellate authority again omitted to dilate on these questions. In support of this submission, the counsel referred to the order dated 1st February, 2001 which had earlier been set aside by this Court,—*vide* order dated 10th July, 2001 and the order dated 8th October, 2001 impugned herein whereby the application for condonation of delay and as a consequence thereof the appeal was dismissed as being time barred. To elaborate his submission, the counsel for the petitioner drew my attention to the statement of PW-3 Subhash Sharma, Advocate and also to the statements of PW-1 Dr.P.S. Gulati and PW-2 Anil Kumar and medical certificate Ex. A.1 to support the contention that petitioner Anil Kumar had been suffering from Typhoid and remained bed ridden from 9th November, 1999 to 3rd December, 1999 and thus he could contact his counsel only on 4th December, 1999. He further submitted that during the evidence of PW. 1-Dr. P.S. Gulati no question had been put to him regarding medical certificate Ex. R. 2 and in view of Apex Court judgment in **Sait Tarajee Khimchand and others versus Yelamarti Satyam and others**, (1), the same cannot be relief upon. He also contended that the

---

statements of PW 1 Dr. P.S. Gulati and PW 2-Anil Kumar have been discarded and PW 3 Subhash Sharma has been held to be liar on surmises and conjectures. The counsel further submitted that a perusal of the order of the Rent Controller would go to show that Mr. Subhash Sharma, Advocate, who had been representing the petitioners, did not argue the matter and rather counsel for the respondent had argued the matter on behalf of the petitioners. Lastly, the counsel submitted that where the delay is unintentional and has occurred not on account of *mala fide* on the part of the petitioners, the court should adopt a liberal approach in condoning the same and decide the dispute on merits. In support of this contention, the counsel has placed reliance on the case **Collector, Land Acquisition, Anantnag and another versus Mst. Katiji and others (2)**, **Vedabai @ Vaijayanatabai Baburao Patil versus Shantaram Baburao Patil (3)** and **G.P. Srivastava versus R.K. Raizada and others, (4)**.

(6) On the other hand, Mr. Sarin, learned senior counsel appearing for the respondent submitted that the present revision petition was not maintainable as the finding returned by the appellate authority is a pure finding of fact and cannot be interfered with by this Court in exercise of revisional jurisdiction. In support of his submission, the counsel relied upon two decisions of the Supreme Court in **Shiv Lal versus Sat Parkash and another, (5)** and in **Atma S. Berar versus Mukhtiar Singh, (6)** Mr. Sarin further submitted that the petitioner Anil Kumar could not seek indulgence of this Court as he had been found to be a liar on both the grounds mentioned in the application for condonation of delay and it has been categorically found by the appellate authority that the plea of the petitioner that he had fallen sick on 9th November, 1999 and remained bed-ridden till 4th December, 1999 was false. To support this contention, the counsel made reference to oral as well as documentary evidence produced by the parties before the appellate authority. The counsel submitted that the medical certificate Ex. A-1 issued by Dr. P.S. Gulati PW-1 has been rightly discarded and disbelieved by the appellate

---

(2) AIR 1987 S.C. 1353

(3) 2001 (3) R.C.R. (Civil) 831 (S.C.)

(4) 2000 (2) Civil Court Cases 714 (S.C.)

(5) AIR 1993 S.C. 275

(6) J.T. 2002 (10) S.C. 224

authority. The counsel made a specific reference to medical certificate Ex. R-2 issued by PW-1 Dr. P.S. Gulati to the landlord and submitted that the same was issued to him on a date when the landlord was abroad i.e. in England, which fact was evident from the entry Ex. R-1 in the passport of the landlord. Counsel for the respondent further submitted that the appellate authority has returned a categorical finding that Mr. Subhash Sharma, Advocate had appeared before the Rent Controller and the presence of counsel for both the parties had been duly recorded in the Zimni orders passed on 10th November, 1999, 12th November, 1999 and 15th November, 1999 and the cutting in the presence of the Advocates is only in the order dated 16th November, 1999. On the basis of these facts, the counsel further submitted that in any case, in such circumstances, the petitioner-tenant ought to have approached the Rent Controller and sought rectification in the order dated 16th November, 1999. In support of his submission, the counsel placed reliance on three decisions of the Apex Court in **State of Maharashtra versus Ramdas Shrinivas Nayak and another**, (7) **Roop Kumar versus Mohan Thedani**, (8) and **Ram Bali versus State of Uttar Pradesh**, (9). The counsel further submitted that statement of PW-3 Subhash Sharma, Advocate that he did not maintain diary was disbelieved by the appellate authority as no lawyer could regulate and properly pursue his cases without maintaining diary where next dates of hearing are inevitably required to be incorporated. The counsel further submitted that there was no question of landlord playing a fraud in November, 1999 as it stood established on record that he was in England from 16th March, 1999 to 24th February, 2000. As a last limb of his submissions, Mr. Sarin further submitted that in any case, all rigors mentioned in the Limitation Act are required to be applied for coming to the conclusion whether there was a sufficient case for condoning the delay. In support of his submission, Mr. Sarin relied upon decision of the Supreme Court in **P.K. Ramachadran versus State of Kerala and another**, (10) and of this Court in **Sanjeev Babbar versus M/s Dev Papers Pvt. Ltd.** (11).

---

(7) AIR 1982 S.C. 1249

(8) AIR 2003 S.C. 2418

(9) J.T. 2004 (Suppl. 1) S.C. 211

(10) 1997 (4) R.C.R. (Civil) 242 (S.C.)

(11) 1988 (2) R.C.R. (Civil) 338

---

(7) Before considering the submissions of the counsel for the parties, it deserves to be noticed at the outset as to on what grounds the appellate authority has declined the petitioners' prayer for condoning the delay of 22 days in filing the appeal. The appellate authority on appreciation of evidence led before it observed that testimony of Shri Subhash Sharma, Advocate did not inspire confidence and his conduct was also unnatural and the petitioners could not be absolved from their wrongful acts and omissions by saying that there was negligence on the part of their counsel. The appellate authority further observed that PW-3 Shri Subhash Sharma, Advocate intentionally withheld the diary and the brief from the Court so as to avoid exposure of falsehood of the plea of the petitioners. It was also observed that the application seeking condonation of delay smacked *mala fide* and it was put forth just as a part of dilatory strategy and therefore, the reasons set out therein did not constitute a "sufficient cause". Similarly, the appellate authority while discussing the statement of PW 1 Dr. P.S. Gulati noted that petitioner Anil Kumar had taken a plea that he was suffering from typhoid and thus could not contact his counsel and in support of factum of his illness, he examined PW1-Dr. P.S. Gulati and produced medical certificate Ex. A-1 issued by him regarding his treatment. But the said doctor was disbelieved by the appellate authority by observing, "such type of doctor, who can issue a medical certificate to a person residing abroad does not seem to be a reliable person and it comes out that he can do any illegal act for a petty consideration".

(8) The appellate authority while discarding the testimony of PW2 Anil Kumar (petitioner-tenant) noticed that the same was self-serving and thus did not seem to be convincing. The appellate authority observed that it was clear from the testimony of Anil Kumar that there were several other doctors in the area where he resided and thus it was highly improbable that he would go to a doctor at such a long distance for his treatment instead of getting treatment from a doctor nearby. The appellate authority in this context further observed that it came out in the statement of Anil Kumar tenant that he was being accompanied by a person to the doctor and if that was so, he could convey the message to his counsel regarding his condition and could even get the appeal prepared and filed in time and that if Anil Kumar could go to the doctor, he could very well go to his counsel as well.

---

(9) I have heard learned counsel for the parties and perused the record.

(10) The approach of the appellate authority while discarding the testimonies of PW1-Dr. P. S. Gulati, PW2-Anil Kumar and PW3—Subhash Sharma, Advocate is not worthy of acceptance. Shri Subhash Sharma had specifically stated that he did not attend the court on 10th November, 1999 and thereafter, as his client had not come to call him. Even though, it may be a professional misconduct but it cannot be a ground to discard the statement of an Advocate as untrue. Further, the Rent Controller had not marked the presence of Shri Subhash Sharma, Advocate by name but had only noted “counsel for the parties” in the order dated 10th November, 1999 and thereafter. Further order dated 16th November, 1999 passed by the Rent Controller shows that there has been a cutting in recording the presence of the counsel for the parties. Initially, the name of Shri S. K. Pathak, Advocate had been noted for the petitioners and Shri G. S. Sandhu, Advocate had been recorded as counsel for the respondent. This was later on altered as Shri G. S. Sandhu, Advocate for the petitioners and Shri S. K. Pathak, Advocate for the respondent. Obviously, this shows that while recording the presence of counsel for the parties in the order dated 16th November, 1999, an error had crept in and, therefore, the presence of the counsel noted on that date cannot be taken to be conclusive. An element of doubt has been created about recording of the presence of the parties in the said order. Moreover, Shri S. K. Pathak, Advocate had signed the vakalatnama for the landlord (which is available on the file of the Rent Controller at page 71) and, therefore, he could not have been engaged by the tenant-petitioners.

(11) In view of the above, it cannot be said conclusively that Shri Subhash Sharma, Advocate had appeared on 10th November, 1999 and thereafter before the Rent Controller. The appellate authority had, thus, rejected the testimony of Shri Subhash Sharma, Advocate on conjectures and surmises.

(12) Referring to the statement of PW1—Dr. P. S. Gulati, suffice it to notice that the landlord had not put any question to him regarding medical certificate Ex.R2 when he had appeared in the

---

witness box, for the reasons best known to him. The said doctor could have explained as to under what circumstances the certificate Ex. R2 was issued by him. No weightage thus, can be given to the said certificate and merely on that basis the medical certificate Ex. A-1 could not be discarded.

(13) Now adverting to the statement of PW—2, Anil Kumar, in the normal course of life, a person would like to get treatment from a doctor for whom he holds an opinion that he is a good physician and while doing so, the distance or the availability of other doctors in the vicinity where he is residing would lose significance unless the disease is of such a nature that it requires immediate attention of the doctor, such as, injuries or heart-attack etc. It has been the specific case of the petitioner—Anil Kumar that he had been suffering from typhoid and for curing such type of disease, the distance would not matter much, as far as the second limb of observation on this issue is concerned, a person from typhoid who is said to have been accompanied by a person while going to doctor for treatment cannot be expected to divert his mind to pursue his court case and ignore his illness and put his life to risk. Thus statement of PW2—Anil Kumar has been illegally discarded by the appellate authority.

(14) Further, Shri Subhash Sharma, counsel for the tenant—petitioner was under obligation to pursue the case on behalf of the tenant irrespective of the fact, whether his client had come to the court to attend the case on a particular date or not. Thus, during the proceedings that had taken place between 10th November, 1999 to 16th November, 1999, the non-appearance of the counsel on behalf of the tenant-petitioners could not be attributed to the petitioners. Counsel for the petitioners had not applied for certified copy of the order on 16th November, 1999. The circumstances clearly show that the application for obtaining certified copy of order dated 16th November, 1999 which was applied by the tenant—petitioners had not been intentionally delayed. The observations of the appellate authority that the tenant had been intentionally trying to delay the proceedings by filing the appeal beyond limitation does not appear to be correct.

---

(15) Another glaring factor is that the application for condonation of delay of 22 days has been hotly contested between the parties which had taken six years. Instead if the appeal had been contested on merits, the same would have been adjudicated on merits by now. The delay in the facts and circumstances cannot be said to be intentional and wilful on the part of the tenant—petitioners.

(16) As noticed earlier, the delay in filing the appeal in the present facts and circumstances cannot be attributed to any malice on the part of the tenant-petitioners or cannot be said to be intentional or deliberate. Generally delay should be condoned where gross negligence or deliberate inaction or lack of bona fide is not imputable to the party seeking condonation of delay. The Apex Court in **Vedabai @ Vaijyanatabai Baburao Patil's case** (*supra*), noticed as under :—

“In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression ‘sufficient cause’, the principle of advancing substantial justice is of prime importance.”

(17) I have considered the case law cited by counsel for the respondent. None of the decisions relied upon by him comes to the rescue of the respondent and the same are distinguishable on facts. The first in the row relied upon by the counsel is the decision in Shiv Lal's case (*supra*) and the second is Atma S. Berar's case (*supra*) in support of submission that the present revision was not maintainable

---

as the finding returned by the appellate court is a pure finding of fact and cannot be interfered with by this Court in exercise of its revisional jurisdiction. In both the above reported cases, the observations were in the context of the controversy on merits between the parties. In the former case, it was held that the High Court cannot act as a third appellate authority and in the latter, it was observed that the findings of fact returned by the two courts could not have been reversed by the High Court simply because the High Court was inclined to take a different view. In none of the two authorities, the question regarding condonation of delay was there. The petitioner's prayer for condonation of delay has been rejected on appreciation of oral and documentary evidence but the same can be upset by this Court while exercising its revisional jurisdiction if the party is able to show that the finding is the result of erroneous consideration of the evidence and the law.

(18) In Ramdas Shrinivas Nayak's case (*supra*), the facts were quite different and the same have no application to the facts of the instant case. That was a case where the Government counsel denied having made any concession and in that context it was held that Judges' record was conclusive and neither lawyer nor litigant may claim to contradict it except before the Judge himself. Again in the other judgement of the Supreme Court in Roop Kumar's case (*supra*), the facts were totally different than the one involved in the matter in hand. In the said case, the observations made in Ramdas Shrinivas Nayak's case (*supra*) were also noticed. Similarly, Ram Bali's case (*supra*) also does not advance the case of the respondent as the controversy in the case was far away from the one raised in the present revision petition. Thus, all these cited decisions as well do not render any assistance to the respondent.

(19) In so far as the decision of the Supreme Court in P. K. Ramachandran's case (*supra*) is concerned, in the said case there was a delay of 565 days in filing the appeal and the sole ground on the basis of which the same was sought to be condoned and which plea had even been accepted by the High Court was that there was a great rush of work in the office of the Advocate General. This ground was, however, not found to be reasonable or satisfactory by the Supreme

---

Court. The facts of the present case are totally different and the delay involved is only of 22 days. Thus no benefit can be derived by the respondent from this decision as well.

(20) Yet another case of which Mr. Sarin sought a great support is the judgment of a learned Single Judge of this Court in *M/s Sanjeev Babbar's case (supra)*. That matter too was on a different set of facts. A revision filed before this Court was barred by time and an application for condonation of delay was filed. It was observed that the application lacked all material particulars and as a matter of fact no revision had been filed as it was apparent from the record as only some papers with the impugned order had been filed without any 'grounds of revision' as was required under the law. In the facts and circumstances of the said case, the learned Single Judge observed that the said case disclosed the extent to which a petitioner could be irresponsible and negligent of his own rights. It was on this backdrop of the matter that prayer for condonation of delay did not find favour with this Court. In the matter in hand, this is not the position at all.

(21) Accordingly, this revision petition is allowed. The impugned order dated 8th October, 2001 is quashed and the matter is remitted to the appellate authority, Ludhiana for deciding the appeal on merits.

(22) Office is directed to transmit the lower court records to the appellate authority, Ludhiana.

(23) As the matter is an old one, the appellate authority is directed to decide the appeal within a period of three months from the date of receipt of certified copy of this order.

(24) Nothing said herein shall be construed as an expression of opinion on the merits of the controversy involved in the present petition.