

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.****CMP(M) No. 1155 of 2023
Decided on: 25.11.2025**

Anil Kumar Sahni

..... Applicant/Appellant

Versus

Harbans Singh

.....respondent

Coram:**Hon'ble Mr. Justice Bipin Chander Negi, Judge**Whether approved for reporting? ¹

For the petitioner : Mr. Suneet Goel, Sr. Advocate,
with Mr. Vishwas Kaushal,
Advocate.**For the respondent** : Mr. Manohar Lal Sharma,
Advocate.

Bipin Chander Negi, Judge (oral)

The present application has been filed, seeking condonation of delay of three years, ten months and five days in filing the present Regular Second Appeal.

2. Heard learned counsel for the parties and perused the pleadings.

3. The judgment in the case at hand was passed on 26.07.2019. Copy of the same was applied on 27.07.2019. The copy of the judgment was attested on 29.07.2019. In the aforesaid backdrop, the period for filing of the Regular Second Appeal would have expired on 26.10.2019.

¹ Whether the reporters of the local papers may be allowed to see the judgment?



4. In the application filed for seeking condonation of delay, it has been categorically averred that the copy of the impugned judgment and decree was received on 02.09.2019. Conspicuous by absence is an explanation qua the fact of not filing the regular second appeal in the case at hand before the close of limitation, i.e., on or before 26.10.2019.

5. In the application filed seeking condonation of delay, the date on which the applicant came to Shimla to hand over the papers to counsel at Shimla has not been mentioned. The date on which the counsel engaged at Shimla asked the applicant for the complete paper book is also missing. Thereafter, the date on which the applicant went back to Solan and asked his counsel there to obtain the entire record is also absent. The date on which the record was supplied for and the date on which it was available has also not been disclosed. The application on material facts is completely vague. A plea has been taken that in the Months of January and February, 2020, Courts in Solan were closed on account of winter vacation. What the applicant has failed to take note of is the fact that during the winter vacation, the Registry of the Court is open and functioning.

6. Thereafter, the plea of COVID-19 Pandemic from March, 2020 has been sought to be invoked. Benefit of the same cannot be given in the case at hand on account of the fact that the limitation in the case at hand had expired on 26.10.2019 and



not during the pandemic period, i.e., 15.03.2020 till 28.02.2022. It is only in a case where limitation was expiring between 15.03.2020 till 28.02.2022 that on account of the judgment passed by the Apex Court on 10.01.2022 in ***Civil Original Jurisdiction Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 In RE: Cognizance for extention of Limitation with Miscellaneous Application No. 29 of 2022 in Miscellaneous application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020*** that benefit of limitation on account of the Covid period has been accorded. For the reason stated herein-above, benefit of the pandemic cannot be extended to the applicant.

7. Besides the aforesaid, in the application it has been pleaded that in November, 2020 on account of the counsel who had been engaged in Shimla to file Regular Second Appeal being in isolation due to Covid-19 pandemic, the complete file was handed over to the shop-keeper, whose shop exists below the office of the counsel so engaged at Shimla. It is further alleged that the documents so delivered were misplaced by the shop owner and not provided to the counsel engaged at Shimla. It is further stated that the shop-keeper to whom the documents had been handed over has died. No proof of the fact has been placed on record to show that the counsel who had been engaged at



Shimla in November, 2020 was in isolation on account of Covid-19 pandemic. Post delivering of the file to the shop-keeper whose establishment exists below the office of the Advocate engaged at Shimla by the applicant, nothing has been stated qua any telephonic intimation given to the counsel engaged at Shimla in this regard. The conduct of the applicant in this respect defies all logic and common-sense.

8. Per contra, in the reply filed to the application, it has been categorically averred that an execution petition had been filed for implementation of the judgment and decree dated 30.10.2018 passed by the Trial Court. The same had been filed on 16.05.2019. Service was being evaded by the present applicant. It is only on 06.05.2023 that the applicant could be served. Since he did not put in appearance despite being served hence, he was proceeded against exparte. Subsequent thereto, vide order dated 26.06.2023, a list of movable/immovable property of the applicant/JD was solicited from the respondent/non-applicant. The same was being sought for attaching the property of the present applicant/JD. It is only thereafter that the present appeal was filed.

9. Other than the aforesaid, it has categorically been mentioned in the reply that the applicant is involved in numerous matters pertaining to Negotiable Instruments Act and the same are pending consideration before the learned District Court Solan.



Hence, in this backdrop, it is pleaded that the applicant/JD in the case at hand is well aware of all tactics to delay implementation of the judgment.

10. In what cases can Want of 'diligence' or 'inaction' be attributed to an applicant it would be appropriate to refer to ***Katari***

Suryanarayana v. Koppiseti Subba Rao, (2009) 11 SCC 183:

"What of 'diligence' or inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent."

11. In the case at hand, despite having received the copy on 02.09.2019, the applicant had been grossly negligent in not filing the appeal on or before the last date of limitation, i.e., 26.10.2019. Other than the aforesaid, in collecting his brief for the purpose of filing of the appeal also, the applicant has been grossly negligent. The approach of the applicant in collecting record from the Trial Court has been very casual and cavalier. There is a complete lack of diligence on the part of the applicant in filing of his appeal before this Court.

12. The length of delay is immaterial. The condonation of delay is a discretionary power. Exercise of discretion must necessarily depend upon the sufficiency of cause shown and the degree of its acceptability thereof. The expression "sufficient cause" is to be duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause"



means that the party should not have acted in a negligent manner or there was a want of bonafide on its part (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81**).

13. The Court must distinguish between an 'explanation' and 'excuse'. In this respect, it would be appropriate to refer a judgment reported as Sheo Raj Singh (deceased) through Legal Representatives & Others v. Union of India and Another, 2023 (10) SCC 531. The relevant extract of the same are as under:

“.....Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”



14. The cause shown in the application is an excuse and not an explanation. The plea that the file was handed over to a shop-keeper, whose shop exists below the office of the counsel at Shimla and thereafter, the applicant lost track of the papers so deposited seems to be highly improbable. The fact that the papers were deposited with the shop-keeper in November, 2020 on account of the fact that the counsel engaged at Shimla was in isolation on account of Covid-19 pandemic has also not been substantiated by any documentary proof in this respect. Neither is the application supported by an affidavit of the counsel in this respect. The same therefore cannot be believed. Once papers had been left in Shimla in November, 2020, it was incumbent upon the applicant to kept track of the same and ensured that the appeal in the case at hand was filed by his counsel. However, in this respect, post November, 2020, till filing of the present belated appeal, no explanation has been offered. Surprisingly, during the said period, there is no contact with the counsel engaged by the applicant at Shimla. The same is highly unbelievable.

15. The plea raised by the respondent/non-applicant that it is only once in the execution filed that the list of properties both movable and immovable of the applicant being sought by the Executing Court that applicant awoke from his slumber and decided to file the Regular Second Appeal is plausible and believable.



16. The uncertified copies of the Zimini orders, petition and summons sent in the execution bare testimony to the plea being raised. In view thereof, delay of three years, ten months and five days in filing the appeal is not condoned. Application being devoid of merit is dismissed.

(Bipin Chander Negi)
Judge

November 25th, 2025
Susheel