



IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-3394-2019 (O&M)

Date of decision: 27.03.2025

Vijaypal

...Appellant(s)

Vs.

Haryana State Electricity Board and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Navmohit Singh, Advocate
for the appellant.

NIDHI GUPTA, J.

CM-9161-C-2019

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 112 days in filing the accompanying appeal.

The only reason cited by learned counsel for the applicant/appellant in the application for cause of delay of 112 days is that *"the court may look sympathetically into the identity of the appellant and the external events influencing the pursuing of the case at appellate stage. That appellant due to shortage of funds was unable to pursue the appeal within limitation."*

The said reason is vague and general and does not constitute sufficient cause for condonation of extraordinary and inordinate delay of 112 days.

Hence, the present application is dismissed.

**CM-9160-C-2019**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 435 days in refiling the accompanying appeal.

The only reason cited by learned counsel for the applicant/appellant in the application seeking condonation of delay of 435 days is that *“certain objections were raised by the registry on various dates and it took some time to remove the objections. That the counsel bona fide believed that the case has been registered.”*

The said reason cited in the application is vague and general. The same does not constitute sufficient ground for condonation of extraordinary and inordinate delay of 435 days.

Hence, the present application is dismissed.

RSA-3394-2019 (O&M)

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff for recovery of damages from the respondents, has been dismissed by both the Courts below.

2. At the very outset, it may first be pointed out that the present second appeal is of the year 2019; and notice has not yet been issued in the same as the matter has been repeatedly adjourned for 6 years either at the request of or due to non-appearance of the learned counsel for the appellant on 17.02.2020, 13.10.2023, 23.11.2023, 06.02.2024, 10.07.2024 and 05.12.2024.



3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

4. Brief facts of the case as set out in the plaint are that on 6.5.1998 father of plaintiff Sampat along with Lal Chand was digging hole on tubewell of Sh. Arnina Ram son of Angna Ram resident of village Palri Panihar for shifting transformer. At 8:00 a.m. the plaintiff was going to serve food to his father and just away from his father, an electric wire was hanging after breaking from pole from which the plaintiff received burn injuries. As per the MLR (Ex.PW2/C), the plaintiff received 20% burn injuries. Father of the plaintiff lodged complaint with HSEB and to the police averring that plaintiff had received burn injuries due to carelessness and by not doing duties by the officials of the Electricity Department. It was further averred in the plaint that plaintiff is a student of B.Ed. and due to negligence of officials of defendant-Board, he became handicapped. The plaintiff claimed damages to the tune of Rs.5,00,000/- along with interest @ 18% p.a. Hence the present suit was filed on 16.07.2009.

5. Learned counsel for the plaintiff submits that the learned courts below were in patent error in non-suiting the plaintiff as they have failed to take into account the fact that on the date of accident, the plaintiff was a 13-year-old child. It is submitted that any act of the child cannot be considered negligence on the part of the child; and therefore, the defendant-Board was liable to pay the damages. In support of his contention, learned counsel for the plaintiff has relied upon the judgment



of this Court passed in **RSA-5163-2017** titled as “**Chairamn PSPCL and others vs. Ms. Dia**”; wherein it is held that ‘*the onus is on respondents to ensure that even an unwary or a negligent child does not come to harm by their installations in a public place. Indeed the expression of a negligent child should itself be discarded, for a child is entitled to such act as it might indulge in when it has not the age of discretion. We apply the logic of negligence only in a situation where a person understands that there is a danger lurking in the corner and he does an act unmindful of such danger or invites upon himself through an act that could be dangerous. These aspects ought to be irrelevant for a child. The Electricity Board's duty of care shall extend to provide for safety mechanism that will dispel harm even for an act of child. Accidents do take place involving children and in all such situations, Courts have always leaned in favour of minor children to protect their interests that are asserted on their behalf and look for proof to see whether the cause for harm could have been quelled by the person, who had control over the device which had contributed to the harm by exercise of adequate care.*

6. It is contented that therefore, the learned Courts below could not have held that there was any negligence on the part of the plaintiff in the accident that took place; and ought to have granted damages.

7. It is further submitted that the Principle of Strict Liability would be applicable in the present case as it is the duty cast upon the respondent-Board to maintain wires.



8. It is further submitted that as per Rule 91 of the Electricity Rules 1956, it is stipulated that the procedure for Safety and Protective Devices of overhead electric lines erected over any part of a street or other public place etc. shall be protected with the device approved by the Inspector for rendering the line electrically harmless in case it breaks. It is contended that needful was not done in the present case resulting in the accident. As such, the defendant-Board is liable to pay damages to the plaintiff. However, these facts have not been considered in correct perspective by the learned Courts below. It is accordingly prayed that the present appeal be allowed; and the judgments and decrees of the learned Courts below be set aside.

9. No other argument is raised on behalf of the appellant/plaintiff.

10. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

11. I find no merit whatsoever in the submissions made on behalf of the plaintiff. First and foremost, it is the evidence of the plaintiff himself as PW2 that he had seen the broken electric wire before the said occurrence. Despite that, he had opted to go through the danger zone. In these circumstances, necessary caution ought to have been exercised by the plaintiff himself. Needless to say, once the plaintiff has seen the broken wire, it is foolhardy of him not to avoid it. The necessary precaution ought to have been taken by the plaintiff himself.



12. In this regard, it has been contended on behalf of the appellant that any act of a child cannot be considered negligence. The said argument is liable to be rejected in view of the fact that it has been stated before this Court that the plaintiff was 13 years old at the time of accident. However, it is pleaded in the plaint that the plaintiff was a student of B.Ed. on the date of occurrence i.e. 06.05.1998. In any event, there is nothing on record to indicate that the plaintiff was 13 years old at the time of occurrence.

13. For the above said reason, the plaintiff can derive no benefit from the relied upon judgment as in that case, the victim was 3 years old child. As such, the ratio of the above said judgment could not be applied in the present case.

14. It is also to be noted that 3 other persons being PW3 Lal Chand, PW4 Maniram, and PW5 Sampat, who were also admittedly present at the spot had taken due precaution and had chosen to take alternative passage to avoid the electric line. In these circumstances, it is not clear as to why the plaintiff chose to go through danger zone itself.

15. Further, it has been admitted by PW4 Maniram in his cross-examination that no complaint was made in respect of hanging electric wire to the defendant-Board, even though the same was in the knowledge of the plaintiff's witnesses. It has admitted by PW3 to PW5 that they had seen the broken wire hanging from the main line before the incident and they should have intimated about the wire to the respondent-Board but they did not do so. No doubt, DDR (Ex.P1) was got registered by the plaintiff side soon after the occurrence, however perusal of the DDR shows that upon investigation,



no offence/negligence was found to have been committed by the respondent-Board; and, therefore, no FIR was registered against any employee of the respondent-Board. In view of the admission of the plaintiff's witnesses that no complaint was ever made to the respondent-Board, it cannot be accepted that respondent-Board would have any knowledge of the said hanging live wire. As such, no negligence can be attributed to the respondent-Board in this regard. No evidence has been led by the plaintiff to show that respondent-Board had knowledge of the broken wire.

16. It is also relevant to that the date of occurrence is 06.05.1998; whereas the present suit was filed by the plaintiff on 16.07.2009 i.e. almost 12 years after the incident. No reason is given by the plaintiff for filing the suit after such a long gap.

17. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

18. In view of the above facts, I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. Hence, the present regular second appeal is hereby **dismissed**.

19. Pending applications, if any, stand disposed of.

27.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No