

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4333 of 1998 [O&M]
Date of Decision : February 5th, 2015

Smt. Geeta and others Petitioners

Versus

Shiv Charan and others Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Sanjay Mittal, Advocate,
for the petitioners.

None for the respondents.

Dr. BHARAT BHUSHAN PARSOON, J.

Mr. Mahavir Singh Sindhu, Advocate was appearing on behalf of respondent No.1. No one is present on behalf of the respondents. They are proceeded against *ex parte*.

2. In this revision petition, order dated 05.08.1998 of Additional District Judge, Narnaul, passed in first appeal against judgment and decree dated 28.10.1992 of Sub Judge Ist Class, Narnaul, dismissing the application of the petitioners under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, is under challenge.

3. Application for condonation of delay was filed by the widow for herself and for three minor wards of hers as their mother and natural guardian. The impugned judgment and decree of the trial Court is of 28.10.1992. Application for certified copy thereof was filed on 30.10.1992. Limitation for filing the appeal, as per the first Appellate Court's order dated 5.8.1998, expired on 3.12.1992, whereas, the appeal was filed on 16.12.1992.

4. It is elaborately explained in the application and due notice of the same was also taken by the Court below that Smt. Geeta, widow, appellant No.1, was hospitalized whereas other co-appellants with her, were minors. She was to engage and brief the counsel, but due to her

being confined to bed during hospitalization, she could not file the appeal in time.

5. Learned appellate Court has taken note that the delay was only for 14 days. It is clear that no gain had accrued to the appellants, petitioners herein, who also constitute special category by themselves. One appellant is a widow whereas three other appellants are minor children of hers. There was no male member to support and sustain them. The impugned order operates harshly and is highly prejudicial to the interests of the petitioners. To demonstrate, some observations of the Appellate Court are reproduced as under:-

“...They were supposed to know that there is a prescribed period for filing the appeal. They could sign the memorandum and vakaletnama while sitting in the hospital or in their house because it was not necessary for them to come in person to the Court for filing the appeal but they did not do so...”

6. When they were to engage a fresh counsel for this appeal, the instructions could not have been completed in the hospital or at her home. She was ailing and was not on a pleasure trip.

7. Even if they were represented by an Advocate in the trial Court, they were to engage a counsel in the appellate Court and were then to brief him, which could be done only when appellant No.1 was to recover from the illness. Other co-appellants who were minors, could not have done this job.

8. When the ground for condonation of delay has sufficiently been explained and the reasons were also beyond the scope and powers of the petitioners-appellants and particularly when no advantage has come to the appellants and no *mala fides* can be attributed to them, the impugned order is not sustainable either on facts or on law.

9. Sequelly, the revision petition is accepted and the impugned order dated 5.8.1998 of Additional District Judge, Narnaul is set-aside and the application for seeking condonation of delay, is accepted. The said appeal is admitted for hearing, by the first Appellate Court.

10. Learned Appellate Court is directed to decide the same on merits within a period of three months as the same has already been substantially delayed since the matter remained pending for more than 16 years.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 5th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?