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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2981 of 2015

Date of decision: May 04, 2015

Mahima Singh

.....Petitioner

Versus

Dhian Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Aman Dhir, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the orders dated 03.08.2013 and 16.04.2014.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Respondent Nos.1 and 2 had filed suit for permanent injunction restraining the petitioner and defendant-Darshan Singh from interfering in the ownership and possession of the respondent Nos.1 and 2. Suit was decreed vide judgment/decreed dated 20.10.2010. Respondent Nos.1 and 2 also filed an application under Order 39 Rule 2-A of Code of Civil Procedure, 1908 ('CPC' for short) for initiation of contempt proceedings against the petitioner and defendant-Darshan Singh. In the said proceedings, petitioner was proceeded *ex parte* and vide order dated 03.08.2013, it was held as under:-

“9. In view of the discussion in the preceding para, the application in hand is accepted ex-parte to the effect that the respondents are ordered to be detained in civil prison for 15 days having violated the court order dated 30.11.2006. The necessary charges/subsistence

allowance for detention of respondents in civil prison, be deposited by the applicants within 30 days upon which warrants of arrest of the respondents be issued. File be consigned to the record room.”

Thereafter, petitioner preferred an appeal. Alongwith the appeal, an application under Section 5 of the Limitation Act, 1963 was filed for condonation of delay of 144 days in filing the appeal. Vide the impugned order dated 16.04.2014, the said application was dismissed. The learned Appellate Court rightly dismissed the application moved by the petitioner seeking condonation of delay in filing the appeal as the petitioner had initially appeared before the Court in proceedings under Order 39 Rule 2-A CPC. Issues were framed on 14.06.2008. When the case was adjourned for the evidence of the respondent Nos.1 and 2, petitioner did not appear on 06.11.2012 and was proceeded *ex parte*. Application under Order 39 Rule 2A CPC was allowed vide order dated 03.08.2013. In the present case, petitioner cannot say that he was not in the knowledge of the proceedings pending against him as he was appearing before the trial Court and had failed to appear on 06.11.2012 or thereafter.

Thus, in the facts and circumstances of the present case, the delay in filing the appeal cannot be said to be bonafide and was therefore, not rightly to be condoned by the Appellate Court.

Dismissed.

**(SABINA)
JUDGE**

May 04, 2015
m.singh