

103

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

CR No.3887 of 2015 (O&M)

Date of decision: August 05, 2015

Smt. Kelo Devi

.....Petitioner

Versus

Kamlesh Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. H.R. Bhardwaj, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 22.04.2015, whereby, application moved by the petitioner seeking condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioner has submitted that, although, the case of the petitioner for perpetual injunction was dismissed by the trial Court vide judgment/decreed dated 19.08.2009, but the counsel for the petitioner had informed her that the case had been decided against the defendants. Due to this reason, the delay in filing the appeal had occurred. Thus, in the present case, the delay in filing the appeal was neither intentional nor deliberate and was liable to be condoned. In support of his arguments, learned counsel has placed reliance on ***Dilbagh Singh***

versus Collector Land Acquisition, Industries

Department Punjab, Chandigarh and others, 2002-2 The Punjab Law Reporter 775, wherein, it was held as under:-

“We have given serious thought to the respective arguments. In our opinion, learned counsel for the appellant is correct in his submission that the view taken by the learned Single Judge on the issue of condonation of delay is contrary to the liberal approach reflected in the recent decisions of the Supreme Court and, therefore, the impugned order deserves to be set aside. The solitary reason assigned by the learned Single Judge for declining the appellant's prayer for condonation of delay appears to be that he had not contacted his lawyers from time to time. In this context, it is important to bear in mind that majority of people living in the rural areas of the country are illiterate and ignorant of their rights. They are also not aware of this intricacies of law and proceedings in the Court and Tribunals. Most of the time, they are busy in earning their livelihood and suffer injustice at the hands of all and sundry including the State. Therefore, while considering the plea for condonation of delay raised by a peasant or litigant coming from rural area, the Court has to adopt an extremely liberal approach, more-so when the case involves depriving the applicant of his source of livelihood. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, then grave injustice would be done to a majority of population living in rural India and persons like the appellant would be deprived of their legitimate right to seek justice.”

In the present case, petitioner had filed suit for

perpetual injunction. The suit filed by the petitioner was dismissed vide judgment/decreed dated 19.08.2009. Petitioner was aware of the fact that the suit had been decided. Petitioner filed the appeal against the judgment/decreed dated 19.08.2009 alongwith an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of three years and ninety four days in filing the appeal. Since in the present case, petitioner was aware that her suit had been decided, she made no effort to immediately apply for the copy of the judgment/decreed. The plea taken by the petitioner that her counsel had informed her that she had won the suit, fails to inspire confidence. Thus, in the facts and circumstances of the present case, the learned First Appellate Court rightly came to the conclusion that the delay in filing the appeal could not be condoned as the same could neither be said to be bonafide or unintentional. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

August 05, 2015

mahavir