

CR No.579 of 2014 (O&M)

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

**CR No.579 of 2014 (O&M)
Date of decision:16.02.2015**

Isham Singh and another

...Petitioners

Versus

Naveen Kumar

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rishi Nijhawan, Advocate,
for the petitioners.

Mr. Rajesh Sethi, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order of the lower Appellate Court, dismissing their application for condonation of delay of 50 days in filing of the appeal.

It may be pertinent to mention that even this revision petition has been filed along with an application bearing CM No.1609-CII of 2014 for condonation of delay of 25 days in filing and CM No.1610-CII of 2014 for condonation of delay of 4 days in re-filing.

In brief, the respondent Naveen Kumar filed a suit for specific performance of an agreement to sell dated 04.05.2005 against the present petitioners. The petitioners appeared and filed the written statement, however, they did not lead any evidence as not a single witness was

examined by them despite availing many effective opportunities and thus their evidence was closed by order of the Court on 26.07.2012. The trial Court decreed the suit on 31.07.2012. Though the limitation to file the appeal against the judgment and decree of the trial Court is 30 days in view of Article 116(b) of the Limitation Act, 1963 (here-in-after referred to as the “Act”) but the petitioners filed the appeal late by 50 days along with an application under Section 5 of the Act for condonation of delay. The lower Appellate Court has dismissed the application for condonation of delay and hence, the present revision petition.

Counsel for the petitioners has submitted that the delay, in filing the appeal, has occurred as the counsel appearing on their behalf in the trial Court kept them in dark and did not apprise them of the date of decision.

On the other hand, counsel for the respondent has submitted that the petitioners have not come to the Court with clean hands because the petitioners had appeared before the trial Court on 04.06.2012, when they paid the costs, imposed on a previous date. It is also submitted that the petitioners have been thoroughly negligent in pursuing their litigation because despite availing numerous opportunities, as recorded by the trial Court in its order, no evidence was led and despite the judgment and decree having been passed on 31.07.2012, the appeal was filed on 22.10.2012, blaming their advocate in the trial Court, without making any complaint against him either to the Bar Association of which he is a member or to the Bar Council who has granted him license to practice law or any criminal

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case against him for breach of trust, if any, therefore, the story coined by the petitioners for the lapse on the part of their counsel should not be believed.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the submissions made by learned counsel for the petitioners because the petitioners have been negligent throughout inasmuch as there is no explanation given by them for not leading any evidence before the trial Court despite availing many effective opportunities. Moreover, the present revision petition, filed before this Court, is also belated as there is an application filed under Section 5 of the Act for condonation of delay of 25 days in filing and the revision also remained in default, even after filing thereof, for which the petitioners had to file an application for condonation of delay in re-filing as well.

Thus, in view of these facts and circumstances, there is hardly any reason for this Court to interfere in the well considered order passed by the lower Appellate Court.

Resultantly, the present revision petition is dismissed being denuded of any merit.

February 16, 2015
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(Rakesh Kumar Jain)
Judge