

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

Civil Revision No. 6159 of 2015 (O&M)

Date of decision: November 27, 2015

Shiv Charan & Ors

-Petitioners

Versus

Ravi Kumar

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.L. Kohli, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

{1}. In this revision petition, order dated 24.07.2015 passed by Addl. District Judge, Chandigarh has been assailed vide which Miscellaneous Civil Appeal of the petitioners was dismissed on the ground of limitation. There was delay of 245 days in filing the Miscellaneous appeal before the lower Appellate Court. The delay was not condoned and the appeal was ultimately dismissed by the lower Appellate Court. The appeal before the lower Appellate Court arose out of an order passed by the trial Court under Order 39 Rule 1 and 2 CPC.

Trial Court passed the order on 10.01.2013. Said order was

assailed in the appeal. Wife of learned counsel for the petitioners got heart attack on 14.01.2013 i.e. the day on which appeal was filed. She also got two successive heart attacks and ultimately died on 14.06.2013. A day prior to her death, younger brother of learned counsel for the petitioners died on 13.06.2013 and at a later stage, wife of brother of learned counsel for the petitioners also died on 29.09.2013. There were hectic efforts in all the three deaths to provide them all possible medical facilities in which learned counsel for the petitioners remained involved. Learned counsel received traumatic jolts and was not in a position to file the appeal in time. In a way, the latch is attributable to the circumstances in which learned counsel had to respond. Even the appellant No.3 also met with an accident during the intervening period and was also hospitalized. Condition of appellant No.4 also remained indifferent on account of ailment. Learned counsel contends that these are the circumstances in which he was sufficiently prevented from showing any active interest in professional activity and the delay was the result of aforesaid circumstances which were beyond the control of the learned counsel for the petitioners.

{2}. Notice of motion was issued in this case on 18.09.2015. As per office report, sole respondent has also been served as per endorsement dated 28.09.2015 by the office.

None appeared on behalf of respondent. He is proceeded

against ex parte in the present revision petition.

{3}. Since, there is no rebuttal to the aforesaid contentions raised by learned counsel for the petitioners, therefore, in considered opinion of this Court, the Miscellaneous appeal filed by the petitioners before the lower Appellate Court should be considered afresh without insisting upon delay in filing the same.

{4}. Resultantly, this revision petition is accepted. Impugned order is set aside. Additional District Judge, Chandigarh is directed to decide the Civil Miscellaneous Appeal titled as **“Shiv Charan and others vs. Ravi Kumar”** afresh on merits without being influenced by any of observations made in the impugned order.

(RAJ MOHAN SINGH)
JUDGE

November 27, 2015

prince