

CR No. 7031 of 2013

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

CR No. 7031 of 2013

Date of Decision: 03.08.2015

Rattan Chand and others

.....Petitioners

Vs.

Gurinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Paramjit Batta, Advocate,
for the petitioners.

Mr. I.S. Bajwa, Advocate,
for the respondent.

SABINA, J.

Petitioners have filed this petition challenging the order dated 13.08.2013, whereby application moved by the petitioners for condonation of delay in filing the appeal, was dismissed.

Learned counsel for the petitioners has submitted that the delay in filing the appeal was neither intentional nor deliberate. In fact petitioner No. 2 was pursuing the case. However, after January 2007, petitioner No. 2 did not attend the Court hearings as he was under the impression that the case would not be immediately decided. Petitioner No. 2 had fallen sick and due to this reason also, the appeal could not be filed within the prescribed period of limitation. In support of his arguments, learned counsel has placed reliance on the decision of

Hon'ble Apex Court in case **N. Balakrishnan** vs. **M. Krishnamurthy**

CR No. 7031 of 2013

(1998) 7 SCC 123, wherein it was held as under:-

“It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

Learned counsel for the respondent, on the other hand, has submitted that the petitioners had failed to explain the delay in filing the appeal.

Respondent had filed suit for specific performance of agreement to sell dated 07.02.1996. The suit was duly contested by the petitioners. In fact the agreement to sell in question had been executed by Tara Devi (mother of the petitioners) in favour of the respondent. After the death of Tara Devi, the property in question had been inherited by the petitioners. The trial Court decreed the suit of the plaintiff-respondent, vide judgment/decreed dated 15.01.2007.

Petitioners preferred an appeal against the said judgment and decree.

CR No. 7031 of 2013

Along with the appeal, petitioners moved an application under Section 5 of the Limitation Act, 1980 seeking condonation of delay of about 14 months in filing the appeal. The case of the petitioners was that in fact petitioner No. 2 was pursuing the case but he had not attended the Court hearings after January 2007. The learned trial Court rightly held that the said plea of the petitioners could not be believed as the suit was disposed of on 05.01.2007. So far as the plea of the petitioners that due to illness of petitioner No. 2, they could not file the appeal with the prescribed period of limitation is concerned, the same was also liable to be rejected as all the petitioners were required to pursue the case. In case, petitioner No. 2 was not well, the other petitioners should have pursued the case. Admittedly, petitioners had failed to produce any medical record qua the illness of petitioner No. 2.

In the facts and circumstances of the present case, the learned Appellate Court rightly held that there was no ground to condone the delay in filing the appeal.

In the facts and circumstances of the present case, the judgment relied upon by learned counsel for the petitioners fails to advance the case of the petitioners as in the present case, petitioners had failed to establish that the delay in filing the appeal was neither *mala fide* nor unintentional.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

August 03, 2015
nitin