

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 7226 of 2012 (O&M)
Date of Decision : 04.02.2015

Satpal and others

....Petitioners

Versus

Satya Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Vaneet Soni, Advocate
for the petitioners.

Mr. Ashwani Verma, Advocate
for the respondents.

R.P. Nagrath, J. (Oral)

Challenge in the instant petition is to the order dated 18.10.2010 (Annexure P-2) whereby application under order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 15.05.2006 was dismissed by the trial Court and the order dated 29.09.2012 (Annexure P-4) of the Appellate Court whereby the appeal was dismissed on the ground of delay of 27 days in preferring the appeal.

The plea set up by the petitioner was that his counsel noted the next date of hearing from 18.10.2010 to 08.11.2010 as another case with similar particulars was fixed as per cause list dated 18.10.2010 (Annexure P-5) whereas it was recorded that the trial Court had pronounced the order on 18.10.2010. As per the

cause list of the trial Court, the present case titled "Satpal vs. Satya Devi" was also fixed on the same date. The petitioner applied for certified copy of order dated 18.10.2010 on 22.11.2010 and copy was prepared on 09.12.2010 and appeal was ultimately filed on 16.12.2010. The suit was for claim of damages for causing bodily injuries on the person of the plaintiff.

The Appellate Court framed the issues from pleadings on the application for condonation of delay as under:-

1. Whether there are sufficient grounds to condone the delay in filing the appeal? OPA
2. Relief.

The petitioner-Chaman Lal appeared himself as AW-1 and examined two more witnesses in support of his contention whereas the respondent-Kulbhushan Singh appeared as RW-1. Learned Appellate Court was not convinced with the explanation furnished by the petitioner for the delay of 27 days in filing the appeal. It was observed by the Appellate Court as under:-

"13. On the other hand, I am of the confirmed and considered view that the law pressed into service by the learned counsel for the applicant is not applicable to the circumstances of the given case. The Hon'ble Apex Court in case reported 1999 (1) PLR 4672 (SC) while condoning the delay had held that "sufficient cause" should receive liberal construction so as to advance substantial justice. Once the court accepts

the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. I am of the confirmed and considered view that in the instant case sufficient cause has not been explained by the applicants to the satisfaction of the court. They have slept over the matter for almost 27 days. If they have any communication gap with their counsel that is not the sufficient cause. Sufficient cause is something more than mere non concern and deliberate in action. It was the duty of the applicants to communicate with their counsel and know about the fate of their case. The law has not at the whims and fancies of such negligent parties who sleep over the matter for as long as 27 days.”

After hearing learned counsel for the parties at considerable length, going through the order passed by the Appellate Court and the paper-book, I find that the Appellate Court has tried to find out strict proof of delay of 27 days in filing the appeal. This approach should not have been adopted by the Appellate Court in considering the application for condonation of delay in filing the appeal because it is always the endeavour of the Courts to decide the case on merits, especially when the other

side can be compensated with the adequate costs.

In view of the above, the instant petition is allowed by setting aside the order passed by the Appellate Court subject to payment of ₹ 20,000/- as costs to be paid to the respondents on the date to be fixed by the Appellate Court and the Appellate Court would then proceed to decide the matter in accordance with law. The parties are directed to appear before the Appellate Court on 20.02.2015.

February 04, 2015
jk

(R.P. NAGRATH)
JUDGE