

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7842 of 2013 (O&M)
Date of Decision: 09.02.2015

Chief Settlement Commissioner & Ors.

...Petitioners

Versus

Gian Singh & Ors.

...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. Gaurav Goyal, DAG, Haryana
for the petitioners.

Mr. Sanjay Jain, Advocate
for respondent No.5.

R.P. Nagrath, J. (Oral)

Petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 31.05.2013 passed by the learned Additional District Judge, Ambala.

The State of Haryana and other petitioners filed appeal against the judgment and decree of the trial Court alongwith an application for condonation of 104 days' delay in filing the appeal. The application was dismissed by the learned Appellate Court vide the impugned order.

I have heard learned counsel for the parties and perused the impugned order.

The learned State counsel submits that initially certified copy of the judgment was sent to the office of Legal Remembrancer but the same was not sent back alongwith the opinion and only photocopy was sent to the department concerned. Apart from the above contention, certain other reasons for delay have also been disclosed. It is admitted proposition of fact that the learned Appellate Court neither framed issues nor provided opportunity to the parties to lead evidence.

I am of the view that the learned Appellate Court should have framed issues on the controversy of delay in filing appeal and afforded opportunity to both the parties to lead evidence and then proceed to decide the application in accordance with law.

In view of the above, the instant revision is allowed and impugned order is set aside remitting the case back to the Appellate Court with a direction to frame issues on the application under Section 5 of the Limitation Act and afford the parties opportunity to prove their respective allegations on the said application. A condition, however, is imposed that petitioner-appellants would be afforded two

opportunities only to produce evidence on the issues on the application within a period of three months from the date to be fixed before the Appellate Court. Thereafter, respondent-plaintiffs would also close evidence within three months and the learned Appellate Court would proceed to dispose of the application expeditiously and preferably within next two months.

Parties are directed to appear before the Appellate Court on 03.03.2015.

09.02.2015
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(R.P. Nagrath)
Judge