

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

(124)

FAO-6307-2015 (O&M)

DATE OF DECISION: 21.09.2015

NAND LAL THROUGH LR SHASHI KAPOOR

.....Appellant

VERSUS

OM PARKASH AND ORS

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

Present: Mr. N.L. Sammi, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 31.07.2015 passed by the District Judge, Patiala vide which the application for restoration of the appeal was dismissed in default on 29.08.2007.

It is the contention of the learned counsel for the appellant that the appellant who is the son of the deceased-Nand Lal, original plaintiff was not impleaded as a party to the appeal after his death on 05.04.2005. Since he was not aware of the decree dated 01.11.2004 which was a conditional decree subject to deposit of Rs.49,000/- which was paid to Om Parkash-defendant No.1, he could not deposit the said amount nor he was aware of the filing of the appeal by his father or that an application had been moved by his sister namely Sangita Rani impleading herself and Shashi Kapoor

as legal heirs on the basis of a registered will dated 16.02.2005 and thereafter, did not appear in the matter after the application was allowed which resulted in the dismissal of the appeal in default on 29.08.2007. He thus, contends that the reason having been duly explained in the application for his non-approaching the appellate Court for restoration of the appeal as a date prior to the filing of the application, the Court should have taken that into consideration and allowed the same even in the absence of an application for condonation of the delay in filing the application. He thus, contends that the order passed by the learned District Judge, Patiala dated 31.07.2015 deserved to be set aside.

This contention of the learned counsel for the appellant cannot be accepted in the light of the fact that no application under Section 5 of the Limitation Act for condonation of delay in filing the application for restoration of the case has been filed specially when there is an inordinate delay of 9 years in doing so. In the absence of an application for condonation of delay, the impugned order dated 31.07.2015 passed by the Court below cannot be faulted with.

No interference in the present appeal in the impugned order is called for. The same, therefore, stands dismissed.

September 21, 2015*SwarnjitS***(AUGUSTINE GEORGE MASIH)
JUDGE**