

**C.M. NOS.1960 TO 1962 C OF 2014 &
R.S.A. NO.884 OF 2014**

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

DATE OF DECISION: AUGUST 26, 2015

Nanak Chand and others

.....Appellants

VERSUS

Jagdev Singh and others

....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.P.S.Mann, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in C.M. No. 1960 C of 2014 is for condonation of delay
of 336 days in filing the appeal.

The ground taken for approaching this Court after such a long
inordinate and unexplained delay is that after the passing of the judgement
by the learned Additional District Judge, Patiala in Civil Appeal No.51T
(Ashok Kumar Vs. Jagdev Singh and another), on 02.12.2013, vide which
the appeal was allowed against the judgement and decree passed by the trial
Court on 05.03.2012, which pertains to an adjacent shop where the issue
was with regard to the same very passage as in the present case, the present
appeal has been filed with a delay of 336 days.

This explanation of the appellants, as recorded above, for approaching this Court at this belated stage cannot be said to be just, and reasonable.

In fact, it appears that after the dismissal of the appeal preferred by the appellant-defendants by the lower Appellate Court on 07.12.2013, they had accepted the verdict and decided not to challenge the same. However, a ray of hope came with the appeal of Ashok Kumar (referred to above) being allowed by the Additional District Judge, Patiala, and thereafter the appellants approached the Court. This explanation cannot be accepted to be one, which would fulfill the requirement of the statute.

Counsel for the appellants has relied upon the judgement of the Hon'ble Supreme Court in Civil Appeal No.10581 of 2013 (Manoharan Vs. Sivarajan and others), decided on 25.11.2013 to contend that delay should not be taken as a ground for denying a meritorious claim and intent of the law is that justice should be done to the party and mere technicalities should not be taken as a ground for denying justice. Refusal to condone the delay in a meritorious matter at the very threshold would cause the justice being defeated, which can never be the intention of the Court.

There can be no dispute with regard to the principles as have been laid down by Hon'ble the Supreme Court. However, the explanation should be reasonable and sufficient cause should be there for condoning the delay. The right which has accrued on the other party has to be got balanced and equities are not to be invoked merely because the appellants had been waiting on the side line for the outcome of a similar case. In any case, the judgement impugned herein has also been referred to in the judgement and decree passed by the Additional District Judge, Patiala in Ashok Kumar's

case (supra), where the said Court has distinguished the judgement passed in the present case, which was on the ground that it was on different facts and circumstances and even the path in question was not the same. If that be so, no benefit can be taken from the judgement by the appellant/defendants in the present application.

On merits also, this Court is of the view that the evidence taken into consideration by the Courts below for coming to the conclusion with regard to the encroachment on the part of the appellant/defendants cannot be faulted with. There being concurrent findings recorded by the Courts below and otherwise also there being no merit in the case, the principles as laid down in Manoharan's case (supra) are not attracted.

There being an inordinate and unexplained delay of 336 days on the part of the appellant in approaching this Court, the present application stands dismissed being devoid of merit.

As a consequence thereof, the appeal also stands dismissed.

**August 26, 2015
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**