

CM No.7547-CII of 2014 in/and
SAO No.25 of 2014 (O&M)

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

**CM No.7547-CII of 2014 in/and
SAO No.25 of 2014 (O&M)**

Date of decision:26.02.2015

Labh Singh and others

...Appellants

Versus

Chhoto @ Nasib Kaur and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.K.Singla, Advocate,
for the applicant-appellants.

Mr. Rohit Kumar, Advocate,
for the non-applicant/respondents.

Rakesh Kumar Jain, J.

In this application, the applicant-appellants have prayed for condonation of delay of 91 days in filing the present appeal.

In brief, the plaintiff/respondent no.1 filed a suit for declaration and permanent injunction against the applicant-appellants who were arrayed as defendants no.1 to 3. The suit was dismissed on 15.03.2011 but the lower Appellate Court set aside the order of the trial Court and remanded the case back vide its order dated 17.10.2013.

The parties appeared before the trial Court after the remand and the plaintiff/respondent no.1 led his entire evidence in terms of the order of the lower Appellate Court and almost all the witnesses of the plaintiff/respondent no.1 were even cross-examined by the counsel for the applicant-

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appellants except for one.

It is averred in the application that the applicant-appellants are rustic villagers. They contacted the advocate through whom the present appeal has been filed, who advised them that they should file the second appeal in this Court against the order passed by the lower Appellate Court. Thereafter, the present appeal has been filed and in that process, the delay has occurred. It is submitted that the delay is neither willful nor intentional but due to *bona fide* mistake and lack of knowledge of the applicant-appellants.

Learned counsel for the applicant-appellants has relied upon a decision of the Supreme Court in the case of **State (NCT of Delhi) v. Ahmed Jaan**, 2008(4) R.C.R. (Civil) 126 to contend that meritorious matters should not be thrown at the threshold on the ground of delay and the merit in the main appeal should also be considered as a sufficient cause.

On the other hand, counsel for the non-applicant/respondent no.1 has filed reply to the application in which it has been averred that the applicant-appellants have not come to the Court with clean hands as on the one hand they are proceeding with the suit in the trial Court after the remand and on the other hand, the present appeal has been filed against the said order of the lower Appellate Court. It is also submitted that nothing has been disclosed in the application as to on which date the applicant-appellants had contacted the counsel of this Court and on which date advise was given to them to file the second appeal.

After hearing learned counsel for the parties and examining the

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available record, I am of the considered opinion that there is no merit in the present application.

There is no quarrel with the judgment of the Supreme Court cited by learned counsel for the applicant-appellants but act and conduct of the applicant-appellants has to be looked into for the purpose of considering their prayer for condonation of delay. As per the order of the lower Appellate Court, the trial Court was to record findings on the newly framed issues by affording three effective opportunities each to both the parties. The applicant-appellants accepted the order and even cross-examined all the witnesses of the plaintiff-respondent no.1 on the newly framed issues and then filed the present appeal as well to challenge the order of the lower Appellate Court dated 17.10.2013 as illegal. The applicant-appellants cannot blow hot and cold in the same breath and should have challenged the order of the lower Appellate Court at the outset, therefore, it cannot be said that the delay caused in filing the appeal is due to *bona fide* mistake on the part of the applicant-appellants or their lack of knowledge because presumption is that ignorance of law is no excuse.

In view of the aforesaid discussion, I do not find any merit in the present application for condonation of delay of 91 days in filing the appeal and hence, the same is hereby dismissed.

Consequently, the main appeal is also dismissed.

February 26, 2015
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(Rakesh Kumar Jain)
Judge