

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1021 of 2014

Date of Decision:18.1.2016

Kanta Devi and others

---Petitioners

vs.

Sanjeev Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sandeep Kotla, Advocate
for the petitioners

Mr. Ashish Gupta, Advocate
for the respondents

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

Rekha Mittal,J.

The present petition lays challenge to order dated 5.12.2013 passed by the District Judge, Karnal whereby the application filed under Section 5 of the Limitation Act for condonation of delay in filing the appeal against the judgment and decree dated 25.5.2011 passed by the Civil Judge (Junior Division), Karnal filed by the petitioners has been dismissed and as a consequence, the appeal filed by the petitioners was dismissed being barred by limitation without deciding it on merits.

Counsel for the petitioners contends that there was delay of 101 days in filing the appeal and the said delay is sufficiently explained in the application filed by the petitioners. It is argued that the petitioners submitted the papers to their counsel for drafting the appeal but their counsel neither drafted the appeal nor sent necessary intimation to them and as a result, there occurred delay on 101 days in filing the appeal. It is argued that the petitioners have already approached the Bar Council, Punjab and Haryana for initiating action against the advocate who was engaged by them to file the appeal but failed to do so resulting in delay in filing the appeal.

Counsel for the respondents has controverted the contentions by urging that the averments made in the application have no factual foundation and the same are the result of concoction. It is further argued that as there was no sufficient ground for condoning the delay, the appellate court has rightly dismissed the application and as a consequence, the appeal being dismissed as time barred.

I have heard counsel for the parties and perused the records.

Be that as it may, there cannot be any dispute about the settled proposition of law that endeavour should be made to adjudicate upon the conflicting interests of the parties on merits. A categorical plea has been raised by the petitioners that they submitted the papers with their advocate but he failed to file the appeal in time. Counsel for the respondents has not contested the plea of the petitioners that they have initiated proceedings for action against their counsel who failed to file the appeal as per their instructions. It may be true that the petitioners have not explained each

day's delay by giving a valid justification but in view of contentions of the petitioners coupled with the fact that the petitioners have not gained in any manner whatsoever by filing the appeal after delay of 101 days and the fact that the parties are required to be heard on merits instead of throwing them away on certain technicalities, in my considered opinion, the impugned order passed by the District Judge, Karnal cannot be allowed to sustain and liable to be set aside.

In view of what has been discussed hereinabove, the impugned order is set aside, the application filed by the petitioners for condonation of delay in filing the appeal is allowed and delay of 101 days in filing the appeal stands condoned.

For the foregoing reasons, the petition is allowed, the impugned order is set aside, the application for condonation of delay is allowed and the appellate court is directed to decide the appeal on merits expeditiously preferably within a period of six months from the date of parties putting in appearance before the appellate court on 19.2.2016.

Petition stands disposed of accordingly.

(Rekha Mittal)
Judge

18.1.2016
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