

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

**CR No.2802 of 2015 (O&M)
Decided on: 29.03.2016**

Rajinder Singh

....Petitioner

Versus

Sarwan Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Peeush Gagneja, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition has been directed against order dated 04.07.2014 passed by the Additional District Judge, Fazilka, dismissing application of the petitioner under Section 5 of the Limitation Act for condoning delay in filing the appeal.

Counsel for the petitioner would contend that Sarwan Singh, his brother filed a suit for declaration claiming right in the suit property by assailing registered sale deed bearing Vasika No.303 dated 15.03.2005 being illegal, null and void, against the rights of the plaintiff as Gurdip Singh was not in a sound disposing mind when Will dated 15.03.2005 was purported to be executed. The suit filed by the plaintiff/respondent was decreed by the trial Court on 19.12.2011.

The petitioner filed an appeal to challenge the judgment and decree passed by the trial Court. Along with the appeal, an application was filed for condoning delay of approximately six months

in filing the appeal that came to be dismissed by the First Appellate Court. It is further submitted that the petitioner has sufficiently explained delay in filing the appeal when otherwise there is nothing on record to suggest that delay was intentional much less *mala fide*. The last submission is that a serious prejudice is likely to be caused to the petitioner in case the impugned order is allowed to sustain and he is not provided an opportunity to be heard on merits of the appeal.

I have heard counsel for the petitioner, perused the records but find no merit in the petition.

The Appellate Court in order to decide plea of sufficient ground to condone delay in filing the appeal, framed issues, permitted the parties to adduce evidence and in view of its findings on Issues No.1 and 2, rejected prayer of the petitioner.

The plea of the petitioner in the application is that he came to know regarding passing of the decree dated 19.12.2011, visited the office of his counsel on 25.02.2012 but the Clerk of his counsel assured him that he would inform him (applicant) as and when he gets certified copy of the judgment and decree. The Court in para 9 of the impugned order has noticed that even if plea of the petitioner is taken as correct, the petitioner being a prudent person was expected to remain in touch with his counsel to know about supply of certified copy of judgment and decree. It was further held that there is nothing in the pleadings and evidence on record as to who was the Clerk of counsel for the petitioner nor the Clerk has been examined in support of his contention.

It is true that the Court is generally liberal while construing

the expression 'sufficient cause' with an intent that the parties should be heard on merits instead of rejecting their claims on technicalities and procedural delays. On the other hand, a person who does not approach the Court with clean hands is not entitled to indulgence in exercise of discretionary jurisdiction of the Court. There is no explanation tendered by the petitioner as to what deterred him from contacting his counsel or the Clerk to know about supply of certified copy of the judgment and decree. As the petitioner failed to justify and sufficiently explain delay of six months in filing the appeal, I find myself unable to differ with the findings recorded by the Court below in rejecting application for condonation of delay eventually resulting in dismissal of the appeal. Not only this, even the present petition has been filed with an application under Section 5 of the Limitation Act for condoning delay of 137 days, sufficient to reflect upon casual and indifferent attitude of the petitioner in pursuing his remedy. That being so, I do not find any error much less perversity in the impugned order.

For the foregoing reasons, the petition is dismissed *in limine*.

(REKHA MITTAL)
JUDGE

29.03.2016
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