

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

CR No.3535 of 2015 (O&M)

Date of decision : 27.07.2016

Shakuntla Singla and others

...Petitioners

Versus

Chander Parkash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. R.K. Gupta, Advocate for the petitioners.

Mr. M.K. Garg, Advocate for respondent No.1.

Mr. Ravi Gakhar, Advocate for respondent No.2.

AMIT RAWAL, J. (Oral)

The petitioner-defendant No.1 is aggrieved of the impugned order, whereby the appeal against the judgment and decree dated 28.07.2012 dismissing the suit of the respondent-plaintiff, was filed after delay of 760 days, has been dismissed.

Mr. R.K. Gupta, learned counsel appearing on behalf of petitioners submits that respondent-plaintiff filed suit for permanent injunction seeking restraint order against the defendant and Municipal Committee that the land adjoining the property i.e. 18 square yards is public

property and, therefore, defendant No.1 is restrained from raising any construction. Even counter claim seeking restraint order against the plaintiff by way of mandatory injunction was filed that the plaintiff had also encroached 4 square yards of land. The suit as well as the counter claim was dismissed. Respondent-plaintiff had filed appeal. Due to wrong advice, appeal could not be filed within period of limitation and thus delay of 760 days has occurred. He submits that same counsel has filed the appeal. Since the appeal qua declining of the mandatory injunction was filed, therefore, delay occurred on part of lawyer who had filed appeal after lapse of 760 days under the wrong impression that as the suit of the respondent-plaintiff since dismissed, so the counter claim filed by defendant No.1 was accepted, whereas the fact is that the counter claim was also dismissed. In support of the contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *Esha Bhatta Charjee Vs. Managing Committee of Raghunathpur Academy and others*, 2013 (12) SCC 649.

Learned counsel appearing on behalf of respondent submits that no explanation, much less, reasoning explanation has come forth in seeking delay. Explanation of each and every days, delay is conspicuously wanting. It is settled law that party cannot take a benefit of the wrong advice given by the counsel and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book.

De hors of the fact that the petitioner had been lackadaisic in filing the appeal but the fact remains that the litigants go by the advice of

the lawyer. Since the counter claim as noticed above has been dismissed, thereafter appeal was filed. In this process, delay of 760 days has been occurred.

In view of the principle culled out by *Esha Bhatta Charjee Vs. Managing Committee of Raghunathpur Academy and others, 2013 (12) SCC 649*, delay is condoned. However, subject to the cost of ₹25,000/- to be paid to the counsel for the respondent-plaintiff in the High Court to defray the litigation expenses. On deposit of the cost, delay of 760 days is condoned. Appeal at the instance of the petitioner-defendant shall be heard along with the pending appeal filed by the respondent-plaintiff.

Revision petition stands allowed with the aforementioned terms.

27.07.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned: Yes

Whether reportable:- Yes/No