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

CR-334-2014

Date of Decision : May 31st, 2016

Charanjit Kaur

.... Petitioner

Versus

Beehal Singh alias Beeka Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Sherry K. Singla, Advocate,
for the petitioner.

Mr. Inderjit Singh, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition for setting aside order dated 12.12.2013
[Annexure P/4] passed by learned Additional District Judge, Bathinda
whereby application under Section 5 of the Limitation Act, 1963 filed by
Beehal Singh, respondent herein for condonation of delay in filing the
appeal was accepted.

Learned counsel for the petitioner while assailing the order,
Annexure P/4, submitted that in the present case, decree for specific
performance of agreement to sell was passed by the Court of first instance

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on 22.08.2009 [Annexure P/1] and execution petition was filed on 22.10.2009. Thereafter, the respondent put in appearance through his counsel Shri H.S.Chahal in the execution proceedings on 28.05.2010 and the matter remained pending. Vide order dated 12.11.2010, the execution application was dismissed as withdrawn being satisfied. Subsequently, the appeal was filed by the respondent against the judgment and decree dated 22.08.2009 before the Court of learned Additional District Judge, Bathinda on 26.11.2010, alongwith application under Section 5 of the Limitation Act for condonation of delay. The petitioner filed reply contesting the same *inter alia* taking the plea that the respondent had been appearing in the execution proceedings through his counsel, but learned Additional District Judge erroneously allowed the application vide impugned order dated 12.12.2013 [Annexure P/4] and the said order is liable to be set-aside.

Learned counsel for the petitioner further submitted that the appeal was filed after an inordinate delay of about one year and three months and there was absolutely no ground for condonation of delay as the passing of decree dated 22.08.2009 was very much in the knowledge of the respondent and subsequently, merely taking the plea that he was not aware of passing of decree and came to know about the same only on 1.11.2010 was totally incorrect. As such, the impugned order condoning the delay of one year and three months, without there being any valid explanation, was not justified and the same be set-aside.

Learned counsel for the respondent submitted that the respondent was not informed about passing of the decree by his counsel, only because of that the appeal could not be filed within time. Otherwise, there was no

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reason for the respondent not to file the appeal. Learned counsel for the respondent also submitted that it is settled proposition of law that a party should not be made to suffer because of the conduct of his counsel and the case should be decided on merits rather than dismissing it on technical grounds. More so, the main appeal is to be decided on merits. The present petition is without any merit and the same be dismissed.

Having considered the submissions made by counsel for the parties and there being no dispute on the facts that judgment and decree were passed by the Court of first instance on 22.8.2009, execution proceedings remained pending and counsel for the respondent put in appearance on 28.5.2010 and the execution petition was dismissed being satisfied on 12.11.2010, the Court below has accepted the application after framing of issues and leading of evidence. The first Appellate Court has also placed reliance upon the statement of the present petitioner recorded as RW-1 whereby she has stated that she has no objection if the application under Section 5 of the Limitation Act is allowed and mainly on that account, the application was accepted subject to payment of costs of Rs.500/-. Needless to mention that law on the point is settled that the case should be decided on merits, rather than dismissing on technicalities. In such a situation, the other party can well be compensated by allowing costs. In the present case, the Court below has already passed the order whereby costs of Rs.500/- has been allowed. Undisputedly, the respondent was little negligent on account of non-filing of the appeal, but the plea taken by the respondent that he was not informed by the counsel is such a ground which cannot be ignored. Charanjit Kaur, the present petitioner had stated before

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the Court below while dealing with the ground of condonation of delay that she had no objection if delay is condoned and accordingly, nothing remained to be decided by the Court below if the petitioner herself was agreed for condonation of delay. That being so, there is no illegality in the order dated 12.12.2013 passed by learned Additional District Judge, Bathinda.

In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 31st, 2016
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