

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5790 of 2015(O&M)
Date of decision : February 8, 2016

Ram Kumar @ Ram Kanwar

..... Petitioner

Versus

Krishan Chand (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Lajpat Sharma, Advocate
for the petitioner.

None for the respondents.

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

Amit Rawal, J (oral).
CM No. 18385-CII of 2015

This is an application under Section 5 of the Limitation Act seeking condonation of delay in filing the revision petition.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 8 days in filing the revision petition is condoned.

The application stands disposed of.

CR No. 5790 of 2015(O&M)

Due to inadvertence, on the last date of hearing, instead of marking presence of Mr. Lajpat Sharma, presence of Amit

Rawal, has been marked. The same is corrected.

Service upon the respondents has been effected, which has been noticed in the order dated 9.10.2015.

The petitioner-defendant is aggrieved of the order whereby application seeking condonation of delay in filing the appeal under Section 96 CPC being barred by 2 years and 18 days has been declined.

Learned counsel for the petitioner submits that application seeking condonation of delay has been annexed as Annexure P-2 which reads thus:-

That the learned lower court passed the impugned judgment and decree under appeal on 16.11.2014 and after passing decree, the LFs of plaintiff Kishanchand deceased on clarification agreed to take possession of land at point'A' shown in the site plan amicably and the respondent No.1 had been putting off the matter till a month back and now they have secretly filed execution petition for taking possession of site at point ABCD shown in Ex.PW.3/A wrongly and illegally thus the appellant/defendant No.1 having no other alternative except to file the present appeal before this Hon'ble Court.

2. *That there is delay of two years and 18 days in filing the appeal before this Hon'ble Court, which is sought to be condoned in the interest of justice, which were beyond control of the appellant on the grounds detailed in para no.11 to 13 of grounds of appeal.*

3. *In case the delay in filing the appeal is not condoned in that eventuality, the appellant shall*

suffer irreparable loss and injury as would be ruined badly.

It is therefore prayed that the delay in filing the appeal of two years 18 days may kindly be condoned and the appeal may kindly be entertained accordingly.

Sd/-Ram Kunwar
Appellant/defendant No.1.
Ram Kumar alias Ram Kanwar
son of Tokh Ram, resident of
Raipur, Teh. and Distt. Sonapat.

Verification:

Verified that the above contents are correct and true to the best of my knowledge and belief.

Verified at Sonapat Through counsel"

No explanation, much less cogent explanation are forthcoming in filing the appeal in time. Once the judgment and decree for ejectment has been passed against the petitioner, nothing prevented the petitioner-defendant to file the appeal within reasonable time. The application is lacking explanation, much less reasonable explanation. The judgments cited by learned counsel for the petitioner in **State of Nagaland Vs. Lipok AO and others 2005 (2) RCR (Civil) 375 and Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others 1987 AIR (SC) 1353** are based upon different set of facts which are not sustainable.

No doubt, that the courts are liberal in condoning delay but the facts explained above, even does not contribute mistake of the counsel, it is basically on account of defect of the petitioner-defendant in not filing the appeal in time.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

February 8 , 2016
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