

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

CR No.561 of 2014
Date of decision : 13.12.2016

Mahant Rajinder Puri Chela

...Petitioner

Versus

Badi Devi Mandir Sudhar Samiti and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ashok Singla, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioner-defendant No.1 is aggrieved of the impugned order dated 17.12.2013, whereby, application for condonation of delay of 50 days in filing the first appeal against the Judgment and decree dated 14.12.2011, has been dismissed by the lower Appellate Court.

Mr. Ashok Singla, learned counsel appearing on behalf of the petitioner-defendant No.1 submits that delay was not intentional but owing to the reasons explained in the application. The Courts below dismissed the application as the same was stated to be not backed by any cogent reasons, in essence, lacked explanation. In support of his contention, he relies upon judgment of Hon'ble Supreme Court in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*, 2013(12) SCC 649.

Mr. Rajinder Goyal, learned counsel appearing on behalf of respondent No.1 submits that the filing of the appeal along with the application seeking condonation of delay of 50 days is nothing but lackadaisical approach and an attempt to delay the proceedings and keep the sword handling on the head of the respondent(s). Each and every day delay has to be explained, therefore, the application has rightly been dismissed.

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

No doubt, the law of limitation has been debated upon by the Hon'ble Supreme Court in many judgments but in view of the principle culled out by the Hon'ble Supreme Court in Esha Bhattacharjee's case (Supra), I am of the view that opportunity of hearing on merits should have been granted instead of applying rigorous of Limitation Act in strict sense.

For the reasons aforementioned, the order under challenge is set aside. Delay of 50 days is condoned and the appeal is ordered to be restored, however, it shall be subject to the cost of ₹5000/- to be paid to the learned counsel for the respondent(s) in the High Court.

The revision petition is allowed.

Parties through their counsel are directed to appear before the lower Appellate Court on 17.01.2017.

13.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No