

Civil Revision No.6649 of 2016

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No.6649 of 2016
Date of Decision: 20.10.2016**

Rohtash and others

---Petitioners

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Karan Singh, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 3.8.2016 passed by the Civil Judge (Junior Division), Rohtak whereby application filed by the petitioners/plaintiffs under Section 5 of the Limitation Act, 1963 (in short “the Act”) for condoning delay in the civil suit captioned “Rohtash and others vs. State of Haryana and others”, has

been dismissed.

The sole submission made by counsel for the petitioners is that suit filed by the petitioners was dismissed vide judgment and decree dated 10.9.2015 passed by the Civil Judge (Junior Division), Rohtak (hereinafter to be referred to as “the trial court”). The judgment and decree passed by the trial court became subject matter of appeal filed at the instance of the petitioners. The first appellate court decided the appeal on 24.12.2015 with a direction to the trial court to frame issue on the point of limitation and implead Gram Panchayat as a defendant under Order 1 Rule 10(2) of the Code of Civil Procedure (in short “CPC”) and to frame additional issue if necessary in this regard and thereafter to give sufficient opportunity to the Gram Panchyat to adduce evidence and further right of rebuttal to the plaintiffs-appellants. It is argued that without framing an issue in compliance with the direction issued by the Court of Appeal and permitting the petitioners to adduce evidence, the trial court has dismissed the application for condonation of delay, therefore, the order impugned cannot be allowed to sustain.

I have heard counsel for the petitioners, perused the paper book and find that the petition is devoid of merit and deserves to be rejected.

No such direction was issued by the Court of Appeal that the petitioners/plaintiffs may file an application under Section 5 of the Act for condoning delay. The provisions of Section 5 of the Act are not available to condone delay in filing a suit. In this context, reference can be made to a judgment of this Court *Azad Singh Gulia vs. Bhai Ram and another Civil Revision No. 8908 of 2015 decided on 6.1.2016*. In view of the above, I do not find any error much less illegality in the impugned order dismissing application for condonation of delay. However, the petitioners would be at liberty to press their claim for framing of an issue qua limitation, as has been directed by the Court of Appeal.

Disposed of.

(Rekha Mittal)
Judge

20.10.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No