

In the High Court of Punjab and Haryana at Chandigarh.

**CM Nos.250-CII & 251-CII of 2016 in
RSA 1091 of 2012 (O&M)
Decided on 21.1.2016**

Suresh Kumar

--Applicant/Appellant

Vs.

Randhir Singh and another

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. Dinesh Arora, Advocate, for the applicant/appellant

Rakesh Kumar Jain,J: (Oral)

This order shall dispose of CM No.250-CII of 2016 filed for condonation of delay of 558 days in filing the application bearing CM No.251-CII of 2016 under Order 41 Rule 19 of CPC for recalling of the order dated 30.5.2014 by which the second appeal filed by the applicant/appellant was dismissed for non-prosecution. It is submitted that since the appeal was dismissed for non prosecution before notice to the other side, therefore, notice in the application for condonation of delay is not required.

Although, Regular Second Appeal is not on my roster but in order to condone the delay for filing the application for recalling of the order, I have allowed learned counsel for the applicant to argue the case on merit.

It is argued that the plaintiff/appellant had filed a suit for dissolution of firms and settlement of accounts which has been decreed by the trial Court but the said judgment has been reversed by the First Appellate Court.

It is not disputed before me that the plaintiff had also filed a suit in which he had asked for declaration that he is a partner in the said firm and had also asked for dissolution of firm and rendition of accounts. The said suit was dismissed by the trial Court under Order 9 Rule 8 of CPC because the defendant was present, whereas the plaintiff was absent. Thereafter, no application was moved by the plaintiff under Order 9 Rule 8 of the CPC for restoration. The Appellate Court had held that the second suit on the same cause of action is barred under Order 9 Rule 9 of CPC. There is no error in the order of the learned Appellate Court.

In view of the above, I do not find any merit in the appeal and also do not find any reason to condone the delay of 558 days in filing the application for recalling of the order by which the present appeal was dismissed in default because the appellant did not appear on the last four dates.

Hence, both the applications and the appeal stands dismissed.

21.1.2016
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(Rakesh Kumar Jain)
Judge