

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

**SAO No.20 of 2012 (O&M)
Decided on: 10.03.2016**

Registered Firm Harvinder Pal Singh Kuldip Singh

....Appellant

Versus

Pardip Kaur and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Aakash Singla, Advocate
for Mr. Ashok Singla, Advocate
for the appellant.

Ms. Monika Jalota, Advocate
for the respondents.

REKHA MITTAL J. (Oral)

CM No.5094-CII of 2012

Prayer in this application is for condonation of delay of
19 days in filing the appeal.

Heard.

In view of the averments made in the application,
submissions made by counsel for the applicant and there being no
reply filed by the respondent, I am satisfied that the delay is
sufficiently explained and accordingly, the application is allowed,
delay of 19 days in filing the appeal stands condoned.

SAO No.20 of 2012

The present appeal has been directed against order

dated 12.09.2011 passed by the Additional District Judge, Sri Muktsar Sahib, dismissing application of the appellant for re-admission of the appeal by invoking the provisions of Order 41 Rule 19 of the Code of Civil Procedure that was dismissed on 22.03.2010.

Counsel for the appellant has submitted that the appeal was dismissed in absence of counsel for both the parties, as on 22.03.2010 the Advocates at District Courts, Muktsar, were abstaining from work. It is further submitted that the application for recalling order dated 22.03.2010 was filed on 29.03.2010 but the same has been dismissed by the First Appellate Court without appreciating that the parties should not be allowed to suffer for want of some lapse on the part of counsel. It is further submitted that technicality and procedural delays should not be allowed to stand in the way of substantial justice until and unless there is *malafide* on the part of the party approaching the Court for indulgence. It is prayed that the impugned order may be set-aside and appeal may be restored for its adjudication on merits.

Counsel for the respondent has supported the impugned order with the submissions that the Court below has rightly held that strike by Advocates cannot be a ground for re-admission of appeal.

I have heard counsel for the parties and perused the records.

Concededly, the appeal was dismissed for want of prosecution in absence of counsel for the parties. The same could be restored by the Court below even without notice to the respondents. No doubt, strike by Advocates cannot constitute a justifiable ground to stall the legal proceedings but at the same time the parties should not be allowed to suffer for the alleged misconduct on the part of counsels. The application for restoration was filed without any loss of time, within a short span of 7 days. In the given circumstances of the case coupled with the principles of natural justice, it is expedient in the interest of justice that the impugned order is set-aside and ordered accordingly.

For the foregoing reasons, the appeal is allowed, application for recalling order dated 22.03.2010 is allowed and the appeal is ordered to be restored to its original number and status for disposal by the Appellate Court, in accordance with law expeditiously.

(REKHA MITTAL)
JUDGE

10.03.2016
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