

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 5509-11-C of 2016 and
RSA No. 2081 of 2016

Date of Decision: 29.04.2016

Haryana Urban Development Authority, Ambala City through its Estate
Officer

.....APPELLANT

VERSUS

Charanjit Kaur and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Anil Chawla, Advocate,
for the applicant/appellant.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 5509-C of 2016

Prayer in this application is for making good the deficiency of Court fee, which has occurred because insufficient Court fee had been affixed along with the appeal, which subsequently has been made good.

For the reasons mentioned in the application, the present application is allowed. The deficiency in Court fee is allowed to be made good and the same is taken on record.

C.M. No. 5510-C of 2016 & RSA No. 2081 of 2016

Prayer in this application is for condonation of delay of 404 days in filing the appeal.

The reason for the delay has been detailed in para-2 of the

application wherein it has been stated that the Lower Appellate Court dismissed the appeal of the applicant/appellant on 15.09.2014 but the counsel, who had been engaged by the appellant before the Lower Appellate Court, did not deliver the copy of the judgment in the office nor was any intimation sent to the appellant with regard to the dismissal of the appeal. It is only when the summons in the execution proceedings were received it came to the notice of the appellant that the appeal has been dismissed. The matter was sent to the head office on 24.03.2015 when a decision was taken in the head office on 14.10.2015. The papers were got completed from the Courts below and handed over to the counsel who was engaged on 24.01.2016 and the appeal has been filed on 25.01.2016 which has resulted in the delay of 404 days in filing the appeal.

No details as to how the file was processed and the various stages at least from 24.03.2015 till 24.01.2016 have been given which resulted in the inordinate delay which has occurred and that too, unexplained and, therefore, the explanation, as given in the application, cannot be accepted. The application, therefore, deserves dismissal.

The case has also been perused on merits and the counsel has addressed arguments where the suit for mandatory injunction was filed by the respondent No. 1-plaintiff claiming the compensation on account of death of her daughter Balwinder Kaur, who was 3 ½ years and had drowned in a well owned and maintained by the appellant-defendants No. 3 and 4. DDR No. 15 dated 06.03.2003 was registered at Police Station Ambala Sadar about this incident. There is evidence brought on record, which clearly establish that the well was within the land, which was owned, possessed and maintained by the appellant as also the Housing Board,

Ambala. The findings, thus, recorded by the Courts below with regard to the factum of death having taken place because of the negligence on the part of the appellant-defendants cannot be faulted with. The assessment of the amount of compensation is also just and reasonable as it is after due consideration of the pleadings and the evidence brought on record.

In view of the above, C.M. No. 5510-C of 2016 for condonation of delay is dismissed and consequently, the main appeal is also dismissed as barred by limitation.

C.M. No. 5511-C of 2016

In view of the dismissal of the main appeal, application for stay also stands dismissed.

April 29, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE