

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

**RSA No.4397 of 2016 (O&M)
Date of Decision.09.11.2016**

Darshan Singh

.....Appellant

Vs

Surinder Kaur and another

.....Respondents

Present: Mr. Kawaljyot Singh, Advocate
for the appellant.

Ms. Avleen Kohli, Advocate for
Mr. S.S. Rangi, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

C.M. No.11499-C of 2016

For the reasons stated in the application, permission for making
good the deficiency of court fee is granted.

Application is allowed.

RSA No.4397 of 2016

The appeal is accompanying by application seeking for
condonation of delay of 644 days in filing the appeal filed against the
judgment and decree passed by the lower Appellate Court which awarded
interest @6% from the date of filing of the suit till realization on damages
awarded at ₹5 lacs, though the judgment and decree of the trial Court dated
22.10.2013 awarding ₹5 lacs as damages, has not been assailed by the
appellant.

Mr. Kawaljyot Singh, learned counsel appearing for the appellant
submits that the appellant-defendant on the basis of the registration of the FIR,
registered on account of alleged murder of Prem Singh, was arrested on

09.03.2004 and after conviction and undergoing sentence, was released on 25.05.2016. Though the suit of claiming damages was filed at the instance of the legal representatives of the deceased claiming damages in the year 2007, a sum of ₹5 lacs was awarded by the trial court but the said judgment was not assailed in the appeal. Even appellant was represented through the legal aid counsel in the appeal filed by the plaintiffs, as he had not sufficient funds. Though the lower Appellate Court upheld the finding rendered by the trial Court but granted interest @6% per annum.

During the course of the hearing, he confines his arguments for granting of interest as the original amount of damages assessed at ₹5 lacs as per the decree of the trial Court was not assailed. He submits that on his release, the appellant immediately filed the appeal on 27.08.2016 and in this process, the delay has occurred which is neither intentional nor willful but owing to the aforementioned circumstances. In support of his contention, he relies upon the judgment of Hon'ble Supreme Court in **Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and others AIR 1987 SC 1353** to contend that if there is merit in the case, delay should not be fatal in adjudication of the lis.

Per contra, Ms. Avleen Kohli, learned counsel appearing for the respondents submits that as per the averment in the application, the appellant had acquired the knowledge of the judgment and decree of the lower Appellate Court way back in September, 2015 but yet he filed the appeal in August, 2016. Each and every day's delay has not been explained and therefore, the appeal is liable to be dismissed not only on delay but also on merits as the interest awarded is non-commercial and it is liable to be granted by the trial Court and accordingly, the lower Appellate Court awarded the

same, thus, urges this Court for confirming the finding rendered by the lower

Appellate Court.

I have heard learned counsel for the parties, appraised the paper book and of view that the appeal is liable to be dismissed not only on merits but also on delay, for, once there is categoric averment in the application of having acquired knowledge qua allowing of the appeal by the lower Appellate Court, no explanation subsequent to that period has been given. Even if the appellant was confined in jail, he could have availed the services of the lawyer from the legal aid panel, as has been done before the lower Appellate Court.

It is conceded position on record that he was released on 25.05.2016. Even after his release, the appeal had been filed on 27.08.2016 after expiry of 90 days. I am of the view that the delay of 644 days in filing the appeal has gone unexplained and therefore, cannot be condoned. The finding of the lower appellate Court awarding interest is perfectly legal and justified as damages ought to have entailed the element of interest and awarding interest @6% per annum is in accordance with the provisions of Code of Civil as it was awarded on damages and not a commercial transaction.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for consideration in the second appeal. No ground for interference is made out. The second appeal is dismissed not only on the ground of limitation but also on merits.

(AMIT RAWAL)
JUDGE

November 09, 2016
Pankaj*