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

**Civil Revision No.2332 of 2015 (O&M)
Date of Decision: 02.08.2017**

Laxmi Devi @ Lachhi

.....Petitioner

vs

State of Haryana and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Ravi Partap Singh, A.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the judgment and decree dated 17.04.2012 passed by the Civil Judge (Jr. Divn.) Rohtak as well as the judgment dated 20.01.2015 passed by the Addl. District Judge, Rohtak whereby the appeal was dismissed as a consequence of dismissal of the application for condonation of delay.

[2]. Brief facts are that plaintiff/petitioner filed a suit for declaration along with consequential relief of mandatory injunction against the respondent. The said suit was dismissed by the trial Court vide judgment and decree dated 17.04.2012.

Feeling aggrieved against the said judgment and decree, petitioner filed appeal before the lower Appellate Court along with an application for condonation of delay of about 6 months for filing the appeal.

[3]. The ground for condonation of delay was projected that the petitioner was not in the knowledge of decision of the case as she was suffering from heart problem and was under treatment at Delhi Heart and Lung Institute, Delhi. She came to know about the decision on 30.11.2012. After obtaining the certified copy of the judgment and decree and consulting with her counsel, the appeal came to be filed along with application for condonation of delay. Along with the application, the petitioner submitted her medical history to show that she remained admitted in the Hospital from 12.01.2011 to 14.01.2011. Prescription slip dated 17.11.2012 was also placed on record showing that the petitioner was suffering from heart problem and was undergoing treatment at Delhi Heart and Lung Institute, Delhi.

[4]. The application was contested by the respondents.

[5]. The lower Appellate Court after noticing the fact that the petitioner had herself appeared in the witness as PW-1 and her son also appeared as PW-3, came to the conclusion that the

pendency of the suits viz-a-viz. dates of hearing were very much in the knowledge of the petitioner and her son. Ignorance of ultimate date of decision cannot be credited to the advantage of the petitioner.

[6]. I have heard learned counsel for the parties.

[7]. Evidently, the discharge summary was in the context of period from 12.01.2011 to 14.01.2011 and the prescription slip was dated 17.11.2012. Keeping in view the ailment with which the petitioner was suffering from, this Court can well perceive that the ailment was such which necessitated continuous treatment in the Hospital and for that necessary connectivity with both the details can be *prima facie* appreciated. The lower Appellate Court disbelieved the factum of sufferance of the petitioner with an ailment of heart only on the fact that there was no material on record to show that the petitioner was admitted in the Hospital from 17.04.2012 to 12.12.2012. Once the previous record and subsequent record in the context of aforesaid period was brought on record by the petitioner, necessary connectivity in terms of sufferance of the petitioner can be taken note of, keeping in view the fact that the cause of justice should not be thrown at the threshold of technicalities.

[8]. The Court is always empowered to take liberal

approach, if the delay is not occasioned on account of any deliberate inaction or lack of *bona fide* on the part of the litigant. Liberal construction has to be made so as to advance substantial cause of justice. Delay of about 6 months in view of facts and circumstances of the case cannot be construed to be an inordinate delay, nor any third party interest has been crept in during the interregnum period.

[9]. In view of observations made by the Hon'ble Apex Court in **Esha Bhattacharjee vs. Managing Committee of Rahgunathpur Nafar Academy and others, 2013(4) CivCC 399** and **State of Rajasthan and anr. vs. Bal Kishan Mathur (D) through LRs and ors. 2013(4) CivCC 805**, I am of the view that the delay in filing can be condoned in order to allow the petitioner to have decision of her case on merits. The present revision petition has also been filed against the judgment and decree dated 17.04.2012 passed by the Civil Judge (Jr. Divn.) Rohtak. There is no necessity to embark upon anything in the said context as the validity and legality of the said order would be tested in the pending appeal before the lower Appellate Court.

[10]. In view of above, the impugned order dated 12.01.2015 passed by the Addl. District Judge, Rohtak is set aside. Revision petition is allowed. Appeal No.275 of 2012 is hereby restored to

its original number. Both the parties are directed to appear before the lower Appellate Court on 18.08.2017. The lower Appellate Court shall make every endeavour to decide the appeal as early as possible in accordance with law.

August 02, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No