

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

CR No.3913 of 2016 (O&M)  
Date of decision : 23.10.2017

Satnam Kaur and others

...Petitioners

Versus

Kamlesh Sharma

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Vivek Sharma Vashisht, Advocate for the petitioners.

Mr. Y.P. Khullar, Advocate for the respondent.

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**ANIL KSHETARPAL, J. (ORAL)**

**CM No.11906-CII of 2016**

Application is allowed, as prayed for.

**Main Case**

The defendants-petitioners were proceeded ex parte in a suit. A decree for possession was passed on 26.08.2011. The defendants-petitioners filed an application for setting aside the aforesaid ex parte decree on 09.04.2012. It was asserted in the application that the petitioners-defendants gained the knowledge of the decree on 11.01.2012. Both the Courts have dismissed the application on the ground of delay. It is not in dispute that the application for condonation of delay of 56 days was subsequently filed, although, it is true that it was not filed alongwith application for setting

aside the ex parte decree.

Both the Courts have drawn adverse inference against the petitioners on the ground that the application for seeking condonation of delay was not filed alongwith application under Order 9 Rule 13 CPC.

I have heard the learned counsel for the parties at length.

The decree is for possession of a house. It is well settled that no one should be condemned unheard. No doubt, the petitioners filed the application seeking condonation of delay in filing the application under Order 9 Rule 13 CPC subsequently, however, once the application has been filed, the Courts were bound to consider the application on merits.

Taking into consideration the facts and circumstances of the case particularly noticing that on the one hand because of these proceedings, the plaintiff is being deprived of fruits of the decree and on the other hand, the defendants-petitioners are praying that they should be given an opportunity to defend the case, this Court feels that rather than going into the technicalities of the case, it would be appropriate if the delay in filing the application is condoned for the reasons stated in the application and the ex parte decree is also set aside. This would enable the Court to adjudicate upon the rights of the parties afresh within a short time.

Keeping in view the aforesaid facts, the impugned orders passed by the Courts are set aside. The ex parte decree dated 26.08.2011 is also set aside.

Revision petition is allowed.

Parties are directed to appear before the trial Court on 15.11.2017.

Taking into consideration the facts and circumstances of the case, the learned trial Court is requested to decide the case on merits within a period of six months from 15.11.2017.

**23.10.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**