

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

1. CR No.5592 of 2013 (O&M)
Date of decision : 03.11.2017

Tota Singh

...Petitioner

Versus

Veero and others

...Respondents

2. CR No.6201 of 2013 (O&M)
Date of decision : 03.11.2017

Gamdur Singh

...Petitioner

Versus

Gajjan Singh @ Sajjan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sangram Singh Saron, Advocate for the petitioner.
(In both the revision petitions)

ANIL KSHETARPAL, J. (ORAL)

By this common order, I shall be disposing of CR Nos.5592
and 6201 of 2013.

The plaintiff-Tota Singh had filed a suit for declaration
claiming that he is owner in possession of the land fully described in the
plaint. He had also prayed for declaration that sale deed dated 06.10.2009
executed by defendant Nos.1 to 5 in favour of defendant Nos.6 and 7 be

declared illegal, null, void and not binding on the rights of the plaintiff.

During the pendency of the suit, it is the assertion of the plaintiff that he had instructed his counsel to withdraw the suit, however, the suit was dismissed under Order 17 Rule 3 CPC. The plaintiff-Revisional Petitioner came to know about the aforesaid fact later on and the plaintiff filed appeal alongwith application for condonation of delay of approximately six months. The aforesaid first appeal filed by the plaintiff-appellant has been dismissed on the ground that the appeal was barred by time. The First Appellate Court has refused to condone the delay in filing the appeal.

The plaintiff-petitioner had filed application for condonation of delay which was supported by an affidavit. The petitioner had pleaded that in fact the suit has been wrongly dismissed under Order 17 Rule 3 CPC, although he had instructed his counsel to withdraw the suit. The petitioner has further pleaded that this fact came to the knowledge of the petitioner-plaintiff when Patwari i.e. revenue official told him about the copy of the judgment produced by the contesting defendants.

The plaintiff-petitioner had appeared in evidence box and reiterated the assertions made in the application, when issue on the condonation of delay was framed by the First Appellate Court.

It is well settled that the parties should be permitted to contest the case on merits rather than deciding it on technicalities. It was not a case where there was huge delay. The plaintiff-petitioner had come to the First Appellate Court with a positive assertion that he wanted to withdraw the suit but the same was dismissed under Order 17 Rule 3 CPC. No evidence

was led by the respondents while contesting the application for condonation of delay.

Taking into consideration the aforesaid fact, delay in filing the first appeal is condoned. Order under challenge dated 26.07.2013 is set aside.

Both the revision petitions are allowed.

First appeal is restored to its original number.

Parties are directed to appear before the First Appellate Court on 21.11.2017.

03.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No