

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

-.-

Civil Revision No. 6446 of 2017
Date of decision: 18.12.2017

Nishan Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. S K Chawla, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

Challenge in the present petition is directed against orders dated 10.05.2017 (Annexure P7) and 11.08.2017 (Annexure P10) whereby evidence of the petitioner in proceedings for condonation of delay of 180 days in filing the appeal was closed by order and application for recalling order dated 10.05.2017 has been dismissed.

Counsel for the petitioner has submitted that perusal of various zimini orders (Annexure P11) would reveal that the petitioner/applicant was given three opportunities (effective) for adducing evidence. The applicant failed to pursue his remedy in right earnestness as he did not examine himself on three dates, granted for the purpose. Counsel would pray that a serious prejudice would be caused to the petitioner in case, he does not appear in the witness box to substantiate his plea for condoning delay of 180 days in filing the appeal against dismissal of his suit. It is further

argued that the Court below dismissed the application for recalling order dated 10.05.2017 without adverting much less rejecting plea of the applicant that he had gone to Hazoor Sahib but could not return in time.

Perusal of the various zimini orders placed on record substantiates plea of the petitioner that he got three effective opportunities for adducing evidence before his evidence was closed by order. The petitioner has preferred an appeal against dismissal of his suit with an application for condoning delay of 180 days. It is surprising that the Additional District Judge, Faridkot proceeded to record evidence of the respondents despite the fact that the petitioner/applicant did not adduce any evidence to discharge onus of the issues placed upon him. Meaning thereby that the proceedings were carried on without application of mind. Though there was remiss on the part of the petitioner in pursuing the proceedings but taking into consideration that rules of procedure are handmaid of administration of justice and a litigant must get fair opportunity to prove his case on merit coupled with that there could be no *mala fide* on the part of petitioner to delay the proceedings, in the interest of justice, the petitioner is allowed one effective opportunity to examine himself subject to the following conditions:-

- i) The petitioner shall ensure his presence before the Court below on the date to be fixed for his evidence;
- ii) He shall deposit an amount of Rs.5,000.00 with the Legal Services Authority, Faridkot, towards costs;
- iii) A copy of the affidavit to be tendered by way of examination in chief shall be delivered to Counsel opposite well in advance.

Before parting with the order, it is clarified that the instant

petition has been disposed of without notice to the respondents. However, if they have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

18.12.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No