

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.7299 of 2014
Date of decision:9.3.2017**

Dharam Raj

...Petitioner

Versus

Sunita Kumari

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.B.S.Tewatia, Advocate for the petitioner.
Mr.Keshav Pratap Singh, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of defendant, filed under Article 227 of the Constitution of India, is directed against the order dated 9.10.2014 passed by the learned Additional District Judge, whereby first appeal of the defendant-petitioner was dismissed only on account of delay.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that first appeal filed by the petitioner-defendant was dismissed by the learned Additional District Judge not on merits but only on account of delay by passing the impugned order dated 9.10.2014 (Annexure P-3). Learned counsel for the petitioner submits that although the appeal was time barred by 229 days but satisfactory explanation had been furnished by the petitioner and the learned first appellate court ought to have condoned the delay and the appeal ought to have been decided on merits instead of dismissing it only on account of

delay.

On the other hand, learned counsel for the respondent-plaintiff vehemently contended that there was no explanation for long delay of 229 days in filing the appeal. The learned first appellate court rightly dismissed the appeal on account of delay. The impugned order passed by the learned first appellate court is not suffering from any patent illegality and the same deserves to be upheld. He prays for dismissal of the instant revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since the impugned order dated 9.10.2014 passed by the learned Additional District Judge has not been found based on sound reasons, the same cannot be upheld. Present civil revision petition deserves to be accepted, for the following more than one reasons.

It is the settled proposition of law that every court of competent jurisdiction must make an endeavour to decide the lis on merits instead of technicalities alone, including delay. While deciding the case on merits, learned court would be achieving twin objects i.e. (i) it would avoid multiplicity of litigation between the parties and (ii) the court would be in a better position to do complete and substantial justice between the parties.

However, in the instant case, learned first appellate court could not appreciate this principle of law, while passing the impugned order, which has caused manifest injustice to the defendant-petitioner. Having said that, this Court feels no hesitation to conclude that the impugned order cannot be sustained. It was a suit for possession by way of specific

performance of agreement to sell and the learned trial Court granted alternative relief to the plaintiff, while partly decreeing her suit, for recovery of earnest money. This Court, while issuing notice of motion, directed the petitioner to deposit an amount of Rs.10 lacs with the executing court, where the execution of plaintiff-respondent is pending. In compliance of notice of motion order dated 29.10.2014 passed by this Court, petitioner had deposited an amount of Rs.10 lacs with the executing court, as per the receipt dated 30.12.2014, shown by the learned counsel for the petitioner to this Court, during the course of hearing.

A bare perusal of the impugned order would show that defendant has tried his level best to furnish reasonable explanation for the delay in filing the appeal. It is also pertinent to note here that drafting of pleadings, including the applications, is the exclusive domain of the learned counsel for the parties. In majority of litigations, particularly civil litigation, parties had hardly any role to play so far as drafting of pleadings is concerned. However, in the present case, a perusal of the impugned order would show that reasonable explanation was furnished by the petitioner but the learned court below was unable to appreciate the explanation furnished, in the correct perspective and accordingly the impugned order was passed, dismissing the appeal of the defendant on account of delay alone. Under these circumstances, it can be safely concluded that the learned first appellate court failed to exercise its jurisdiction in the manner it ought to have been exercised and the impugned order cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering patent illegality, the same cannot be sustained in law. Accordingly, the impugned order dated 9.10.2014 passed by the learned Additional District Judge is hereby set aside, however, subject to costs of Rs.10,000/- to be paid by the petitioner to the respondent-plaintiff. Application for condonation of delay of 229 days, filed by the petitioner, would stand allowed.

Consequently, matter is remitted back to the learned first appellate court to decide the first appeal of the petitioner on merits, after granting due opportunity of being heard to both the parties and passing an appropriate judgment, in accordance with law. The learned first appellate court is also directed to make an endeavour to decide the appeal at an early date. It is also clarified that till the first appeal of the defendant-petitioner is decided by the learned first appellate court, execution application of the plaintiff-respondent herein, shall remain stayed.

Should there being any confusion between the parties, amount of Rs.10 lacs deposited by the petitioner, in compliance of the notice of motion order dated 29.10.2014 passed by this Court, shall abide by the judgment passed by the learned first appellate court.

Resultantly, with the above-said observations made and directions issued, the instant civil revision stands allowed.

9.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No