

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

RSA No.1509 of 2012 (O&M)

Date of decision : 30.10.2017

Jaswant Singh

...Appellant

Versus

Sunil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parminder Singh, Advocate for the appellant.

Ms. Abha Rathore, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CM No.4082-C of 2012

This is an application for condonation of delay of 822 days in filing the appeal. It has been asserted as under:-

“2. That vide judgment and decree dated 13.1.2010, the Ld. Court of ADJ, Ambala has dismissed the appeal and thereby judgment and decree of lower Court dated 24.09.2009 has been affirmed. It is apposite to mention here, the appeal has been prepared for the filing the same in this Hon'ble Court on 19.3.2010, alongwith requisite court fee amount. However, during the process of filing of the same, the clerk has misplaced the original paper book alongwith requisite court fee amount and certified copy of judgment and decree dated 13.1.2010. Though in the original photo-state copy of the regular second appeal, the exemption application in respect of filing of certified copy

of the judgment and decree dated 24.09.2009 passed by Ld. Civil Judge (Sr. Division), Ambala was prayed. The complete paper book earlier been prepared, wherein the photocopy has been retained, can be shown at the argument.

3. *That further while the appellant contacted with a counsel, as a matter of fact the order of attachment has been issued by the Ld. Executing Court, it has transpires through the objection list in the registry as well as from the brief, that the original appeal alongwith court fee amount has not been filed. Hence by way of instant application the appellant craves indulgence of this Hon'ble Court may for condonation of delay and opportunity to assailing the judgment and decree passed by both the Courts below. Hence this application."*

Application is supported by an affidavit of the counsel.

Taking into consideration the facts asserted in the application, which is supported by an affidavit, in the facts and circumstances of the case, delay of 822 days in filing the appeal is condoned.

Application is allowed.

Main case

The defendant-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Although, learned counsel for the appellant wanted to challenge the concurrent findings of fact on the ground that the signatures in the books of account have not been proved on the file, however, this Court is unable to appreciate the argument raised by the learned counsel in the second appeal.

Both the Courts below after appreciating the evidence available

on the file have recorded concurrent findings of fact, while examining the ledger maintained by the plaintiff in normal course of business and the vouchers duly signed by the defendant that plaintiff has been successful in establishing the claim. Such finding is not shown to be perverse.

At this stage, learned counsel for the appellant has pointed one issue that the learned trial Court had decreed the suit alongwith interest at the rate of 6% p.a. from the date the amount was advanced till its actual realization. He submits that the plaintiff only had filed appeal. Defendant did not file any appeal. However, learned First Appellate Court wrongly taking that the trial Court has awarded interest at the rate of 18% p.a. reduced it to 12% p.a.

Learned counsel for the respondent very fairly admits that there was no cross appeal.

Taking into consideration the aforesaid fact, the First Appellate Court has committed an error. Firstly by wrongly reading the judgment of the trial Court and secondly by enhancing the rate of rent without any cross appeal.

In view of the aforesaid fact while upholding the judgment and decree of the First Appellate Court, it is ordered that the plaintiff shall be entitled to recover the amount alongwith interest @ 6% p.a. from the date of its advance till the date of realization.

Counsel for the appellant has submitted that the principle amount has already been deposited and the same has been withdrawn by the plaintiff.

The plaintiff shall take steps to pay the interest which is due

positively within a period of two months from today.

In view of the above, the present Regular Second Appeal is disposed of.

All the pending miscellaneous applications are disposed of, in view of aforesaid judgment.

30.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No