

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

**RSA No.3770 of 2017 (O&M)
Date of Order:26.07.2017**

Desh Raj

..Appellant

Versus

Paramjeet Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prem Chand Chaudhary, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Defendant is the appellant in the present regular second appeal.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell, dated 17.01.2013.

The learned trial court after appreciating the evidence, decreed the suit filed by the plaintiff, vide judgment and decree dated 15.05.2015.

Defendant filed first appeal with an application for condonation of delay of 21½ months.

Learned first appellate Court after noticing that there is long delay of 21½ months and there is no explanation for condoning the delay, dismissed the appeal on the ground that it is barred by limitation.

Defendant-appellant has preferred the present appeal. In this case, the trial Court had passed a judgment and decree, on 15.05.2015. The appellant preferred the appeal on 06.04.2017 i.e. almost after the delay of 21½ months. The case set up by the appellant is that he had suffered paralysis and therefore, he could not file the appeal. Learned first appellate

court has held as under:-

“In the present case, the impugned judgment and decree have been passed on 15.05.2015 and the appeal was to be filed upto 14.06.2015, whereas the present appeal has been preferred on 31.03.2017 and thus, there is delay of about 21½ months in filing the present appeal. The ground pleaded by the appellant for condonation of delay in filing the present appeal is that the appellant was suffering from paralysis and as such he could not file the appeal in time. However, the appellant has not attached any medical certificate along with application by which it could be inferred that he had been suffering from paralysis and due to which he was unable to prefer an appeal. Moreover, a perusal of record pertaining to execution application filed by respondent-plaintiff before learned lower court shows that the said execution application was filed on 20.08.2015 i.e. after about three months of the impugned judgment and decree and notice of the said execution application was issued to the JD i.e. present appellant-applicant and on the next date of hearing i.e. On 19.09.2015 power of attorney on behalf of JD was filed and case was fixed for 31.10.2015 for filing reply/objections and then to 18.12.2015, 16.01.2016, 20.02.2016 and 05.03.2016 and on 05.03.2016 none appeared on behalf of JD and as such he was proceeded against exparte. Thus, it is clear that

appellant-applicant was pursuing the execution application since 19.09.2015 till 05.03.2016 before learned lower court, but did not prefer any appeal against the impugned judgment and decree and the ground pleaded by the appellant-applicant is not justifiable and does not inspire the confidence of this Court and the delay in filing the present civil appeal cannot be condoned. Therefore, the application for condonation of delay is hereby dismissed.”

I have heard learned counsel for the appellant at length.

Counsel for the appellant has submitted that the efforts of the Courts has always been liberal in condoning the delay. Counsel submits that even if the appellant has not been able to bring on record the medical certificate/record, still, since the application seeking condonation of delay was supported by an affidavit, therefore, the delay should have been condoned.

I have considered the submission made by learned counsel for the appellant. It is not in dispute that pursuant to the judgment and decree passed on 15.05.2015, execution petition was filed. In execution petition, the appellant appeared through counsel on 19.09.2015. Counsel on behalf of the appellant has been appearing in the Executing Court on 31.10.2015, 18.12.2015, 16.01.2016, 20.02.2016 and have been praying for adjournment to file objections. However, on 05.03.2016, no one appeared for the appellant and even in execution petition appellant was proceeded against ex-parte.

The appellant had sought condonation of delay on the basis that

he was suffering from paralysis and as such he could not file the appeal in time. As noticed by the Courts below, the appellant has not been able to produce any medical certificate/record to establish the aforesaid fact. Even before me, the appellant has not produced any medical record.

No doubt, Courts have been liberal in condoning the delay. However, on expiry of limitation of filing the appeal, a right accrues in favour of the other party, that right cannot be defeated just on the request of one of the party, even if the request is found to without any basis. For condoning, such a long delay of more than 21½ months, Court is required to have some material to support the assertion made in the application for condonation of delay, particularly when the reasons for condonation of delay, is illness. However, appellant has failed to produce any such document.

Taking into consideration the facts and circumstances of the case, I do not find any reason to interfere with the order passed by the learned first appellate court, dated 10.07.2017. Therefore, the regular second appeal is ordered to be dismissed.

July 26, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No