

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

1. RSA No.4170 of 2017 (O&M)  
Date of decision : 05.09.2017

Gurdev Singh ...Appellant

Versus

Amrik Singh and another ...Respondents

2. RSA No.4171 of 2017 (O&M)  
Date of decision : 05.09.2017

Gurdev Singh ...Appellant

Versus

Kehar Singh and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Deepak Bhardhwaj, Advocate for the appellant.

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**ANIL KSHETARPAL, J. (ORAL)**

**CM No.10832-C of 2017 in RSA No.4170 of 2017**

This is an application filed for condonation of delay of 979 days in filing the present appeal.

It has been asserted that originally the appeal was filed within a period of limitation but due to certain objections, the file was returned. However, earlier counsel did not re-file the appeal. The present application is supported by an affidavit. Appellant has given the date of filing as well as diary number.

For the reasons stated above, which is duly supported by an affidavit, the delay of 979 days in filing the appeal is condoned.

Application is allowed.

**Main Case**

By this common order, I shall be disposing of two Regular Second Appeal bearing Nos.4170 and 4171 of 2017. The facts are being taken from RSA No.4171 of 2017.

Defendant No.1 is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for recovery against the defendants.

Both the Courts have appreciated the evidence available on the file as also writing Ex.P2 and admission of the appellant in the previous suit Ex.P8 to return a finding that the plaintiff is entitled to the recovery of the amount.

It is the case of the plaintiff that the defendants alongwith their son had received the amount from the plaintiff on the pretext that he shall be sent to USA or Finland. However, son of the plaintiff was taken to Malaysia illegally where he was detained and ultimately deported back. It is further the case of the plaintiff that the respectable members of the locality/Panchayat resolved the matter and defendants gave written undertaking that they will return the amount. Such writing was in favour of the various persons.

Defendant No.1-appellant challenged the aforesaid writing in a separate suit. In the aforesaid suit, defendant No.1-appellant admitted the fact that he gave written undertaking to repay the amount. Keeping in view the aforesaid evidence, both the Courts have decreed the suit.

Learned counsel for the appellant has submitted that original of

Ex.P2 has not been produced. He has further submitted that the suit was bad for non-joinder of the parties as son of the plaintiff has not been added as a defendant.

I have considered the submission. Ex.P2 was admitted in evidence. Counsel for the appellant has failed to raise any objection when writing Ex.P2 was admitted in evidence. Still further, a reading of the judgment passed by the Courts below would show that the appellant never raised any objection to the admissibility of the writing Ex.P2. In view of the aforesaid discussion, there is no force in the submission of the learned counsel.

Next submission of the learned counsel is with regard to the non-joinder of the parties. Learned trial Court has framed issue No.5 on the question of non-joinder of the parties. However, learned counsel for the appellant (defendant No.1 in the suit) did not press this issue before the trial Court. Hence, the aforesaid issue was decided against the appellant. Still further, a reading of the judgment passed by the First Appellate Court would show that no such argument was addressed before the First Appellate Court.

In view of what has been stated above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Both appeals are dismissed.

**05.09.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**