

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

CR-1556-2016 (O&M)

Date of decision : 15.3.2018

VIOM Networkds Ltd and another

..... Petitioners

Versus

Brig. Sarabjit Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kamal Chaudhary, Advocate for
Mr. Sanjeev Gupta, Advocate for the petitioners.

Mr. D.P.Gupta, Advocate for respondent No. 1.

Respondent No. 2-ex parte.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 18.8.2015 (Annexure P-1) passed by learned Additional District Judge, Chandigarh vide which in the civil appeal, an application dated 31.7.2014 (Annexure P-2) filed by the petitioner for condoning the delay of 60 days in filing the appeal along with the appeal was dismissed.

It comes out that respondent No. 1/plaintiff-Brig. Sarbjit Singh has filed a suit for mandatory injunction against Wireless T.T. Info Services and Tata Tele Services Limited and respondent No. 2-Estate Officer, Chandigarh for removing the tower and other equipments affixed on the roof of SCO No. 17, Sector 11-D, Chandigarh.

The suit was decreed by the trial Court vide order dated 5.4.2014. Thereafter, an appeal was filed by VIOM Networks Limited stating that they were earlier known as Tata Tele Services and Wireless TT Info Services Limited. There was a delay of 60 days in filing the appeal and the ground taken in the application for condonation of delay was that earlier counsel Mr. Sandeep Chhabra has been appointed as Assistant Advocate General in this Court in the year 2012 and that petitioner was unable to contact his counsel. On 3.7.2014, learned counsel intimated that the matter has been decided, therefore, applicant-petitioner engaged a new counsel and after examining the record and file, civil appeal was filed. The same was dismissed on 18.8.2015 by learned Additional District Judge, Chandigarh.

Learned counsel for respondents contends that petitioner is not the successor of Tata Tele Services and Wireless TT Info Services Limited.

I am of the view that question regarding the maintainability of the appeal is to be decided in the appeal and not in the application filed under Section 5 of The Limitation Act, 1963. There is a delay of 60 days in filing the appeal. Even though, before the learned trial Court, it came out that counsel was appearing for the petitioner, however, the controversy is regarding fixation of towers and I am of the view that controversy needs to be decided on merits. The opposite party can be compensated by costs for delay in filing the appeal.

Accordingly, delay of 60 days in filing the appeal is condoned subject to payment of costs of Rs. 10,000/- to be paid to the plaintiff-Brig. Sarbjit Singh and the impugned order dated 18.8.2015, passed by learned

Additional District Judge, Chandigarh is set aside. Both the parties are directed to appear before the Appellate Court on 4.4.2018 at 10.00 A.M. and the Appellate Court is directed to hear both the parties on all the points including the maintainability of the appeal and decided the same on merits.

Allowed with above noted observation.

Since, the main petition stands allowed, the miscellaneous application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.3.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No