

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

Civil Revision No.2051 of 2014 (O&M)

Date of Decision: May 01, 2018

Harish Chander

...Petitioner

Versus

HUDA & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Sachin Gupta Ladwa, Advocate,
for the petitioner.

Mr.Abhishek Singla, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order, whereby the appeal preferred against the judgment and decree dated 22.8.2012 dismissing the suit for mandatory injunction against HUDA directing them to allot free hold residential plot of 250 sq.yards under the oustee quota @ ₹850/- per sq.yard, had been dismissed on account of delay of 90 days.

Mr.Sachin Gupta Ladwa, learned counsel for the petitioner submitted that the delay was duly explained in the application, for, the applicant was prevented from filing the appeal as the counsel did not give the proper advice whether against the judgment and decree dated 22.8.2012, appeal was maintainable or not. In this regard, drew the attention of this Court to the relief part, referred to in the judgment and decree of the trial Court, which reads as under:-

“As a sequel to my findings on the foregoing issues no.1 & 2, the suit of the plaintiff deserves to be dismissed. The same is hereby dismissed with costs. However, the plaintiff is at liberty to apply for allotment of plot under oustee quota along with earnest money in pursuance of any public advertisement issued by the defendant in future. Decree-sheet be prepared accordingly. File be consigned to the record room after due compliance.”

In this process, delay of 90 days had occurred. The Court ought to have condoned the delay and heard the appeal on merits as no harm was going to be caused to the other party.

Mr.Abhishek Singla, learned counsel for respondent No.1 submitted that the reasons given in the application for condonation of delay were not backed by any bonafide explanation and, therefore, rightly so the appeal had been dismissed and, thus, urged this Court for upholding the findings.

I have heard the learned counsel for the parties and appraised the paper book.

Since the trial Court had granted liberty to the petitioner-plaintiff to apply for allotment of plot under the oustee quota along with the earnest money, while dismissing the suit, it can be understood that the lawyer or the party could be in confusion to assail the order or not, for, there would have been some evidence in favour of the plaintiff to assert the right *de hor* of the liberty granted. This fact has not been taken care of by the Lower Appellate Court. I am of the view that such law is handmade and the technicalities should not come in the way of the parties. The Court should have focussed in adjudication on merits. Law of condonation is no longer *res integra* in view of decision rendered by the Hon'ble Supreme Court in

Esha Bhattacharjee Versus Managing Committee of Raghunathpur

Nafar Academy and others, (2013) 12 Supreme Court Cases 649.

For the reasons stated above, the impugned order is set-aside.
The appeal is restored to its original number. Lower Appellate Court is directed to decide the appeal on merits.

Revision stands allowed.

May 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No