

CR No.3260 of 2017

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

CR No.3260 of 2017

Date of decision : 29.10.2018

TARSEM SINGH AND ANOTHER

....PETITIONERS

V/S

TRIPTA RANI AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Parminder Singh Kanwar, Advocate
for the petitioners.

Mr. V.K. Kaushal, Advocate
for respondent No.1.

Other respondents-service dispensed with
Being proforma respondents.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition is to order dated 15.12.2016 (Annexure P-4) vide which the application for condonation of 1072 days in late filing of the appeal was dismissed by the learned First Appellate Court.

[2] Learned counsel for the petitioners contends that on decision of the civil suit on 22.03.2011 (Annexure P-1), the petitioners were informed by their counsel that the suit had been decided in their favour, therefore, they did not procure a certified copy of the judgment and decree and came to know about decision dated 22.03.2011 (P-1) being against them only on 21.03.2014 from the revenue official, who made a mutation in favour of the respondent-

decree-holder.

[3] The learned Additional District Judge, Hoshiarpur, dismissed the application on the ground that the story as put forth by the petitioners did not constitute sufficient cause and they could not be said to have exercised due diligence. Relevant extract of the decision of the impugned order is reproduced as under:-

“11. Admittedly there is delay of 1072 days in filing the appeal. It has been admitted by AW-1 Tarsem Lal in his cross examination that the Civil Suit remained pending for about 10 years and throughout the case he has been attending all the dates himself. It has also been admitted by AW-1 Tarsem Lal that he had seen all the evidence led by the parties and further that the case was decided by the trial court about five years back. Talking into account the fact that the applicant has been vigilant enough during the pendency of the case and he has been attending each and every date of hearing and all the evidence was recorded in his presence, it does not sound plausible that the applicants did not come to know about the fate of the case when it was decided against them. The claim of the applicants that their counsel in the lower court informed them that the case was decided in their favour also does not appear to be correct. In his regard, apart from the bare statement of applicant Tarsem Lal, no evidence has been led. Strangely enough, the applicants did not obtain the copy of the judgment after the case was decided on 22.03.2011 and certified copy was admittedly applied on 21.03.2014 i.e. exactly after a period of three years. Under the circumstances, it cannot be said that the delay in filing the appeal was not intentional. Ignorance of law is not valid defence in the eyes of law. It is a case of clearcut negligence on the part of the applicants and while pursuing the litigation they have not exercised due diligence. Therefore, on the basis of the bare statement of applicant Tarsem Lal, which is not corroborated by any other documentary or oral evidence, it cannot be said that there are sufficient grounds to condone the delay of 1072 days in this case. This issue is accordingly decided against the applicant and against the respondents.”

[4] Learned counsel for the petitioners has relied upon the decision of this Court in 'Pawan Kumar versus Surjit Kaur and others', 2007(4) PLR 160, which was a case, involving delay of 1528 days in late filing of the petition due to mistaken legal advice. In another case, 'Jagjit Singh Puri versus Hari Dev Bansal Proprietor Ashoka Tin Works, Mansa Road, Bathinda', 2008(4) PLR 316, there was a delay of 345 days in late filing of the appeal, which was condoned, subject to payment of costs of Rs.5,000/- by taking into account that the Advocate earlier engaged had shifted to Delhi and although there was some negligence on the part of the petitioner in not contacting the Advocate but the petitioner did not stand to gain anything by not filing appeal within the period of limitation.

[5] Per contra, learned counsel for respondent No.1 contended that the petitioners had failed to substantiate sufficient cause for not filing the appeal within the stipulated period of time, besides the conduct of the petitioners/ applicants-appellants disclosed absence of good faith as defined under Section 2(H) of the Limitation Act, 1963 (hereinafter referred to as the Act) which is a *sine-qua-non* for entertaining an application to condone delay in late filing of the appeal.

[6] Learned counsel contended that as per the definition of good faith, nothing shall be deemed to be done in good faith which is not done with due care and attention and the facts of the instant case go to show beyond an iota of doubt. The complete absence of good faith i.e. exercise of due care and diligence since despite the petitioner having attended the proceedings throughout during the pendency of the suit he remained contented merely on the verbal assurance allegedly given by the counsel that the case had been decided in his favour without bothering to apply for a certified copy of the

order, besides nothing has been referred to in the record to show that any action was taken against the counsel for giving wrong information with regard to the case having been decided in favour of the petitioners, when the case had been decided against them.

[7] Having considered the submissions of learned counsel for the parties and in view of the position as notice above, I am of the considered view that the petitioners have miserably failed to substantiate sufficient cause, as also to show that they acted with due care and diligence.

[8] Finding no merit in the revision petition, the same is accordingly **dismissed.**

(B.S. WALIA)
JUDGE

October 29, 2018

rajneesh

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No