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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3494-2017

Date of decision : 28.03.2018

Surta Singh

...Petitioners(s)

Versus

Sarabjit Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bawa, Advocate
for the petitioner.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 07.01.2017 (Annexure P-3), whereby the application seeking condonation of delay of 10 months along with the appeal filed against the judgment and decree dated 17.01.2012 has been dismissed being barred by law of limitation.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff instituted the suit for partition by metes and bounds and permanent injunction, in respect of the suit property between the plaintiff and defendant Nos.2 to 3. The said suit was dismissed under the provisions of Order 17 Rule 3 CPC vide judgment and decree dated 17.01.2012. The appeal preferred against the aforementioned judgment and decree was barred by delay of 10 months. Accordingly, an application seeking condonation was filed, but the same had been dismissed.

He further submitted that non-examination of the witnesses before the trial Court as well as filing of the appeal was not intentional as the counsel did not inform about dismissal of the suit giving cause of action to the plaintiff to file the appeal within a period of limitation. The delay was neither intentional or willful, but owing to the reasons mentioned in the application. There is a *bona fide* inadvertence/error.

This Court on 15.05.2017 had issued the notice of motion and as per the order dated 01.02.2018, service is complete, but there is no representation on behalf of the respondents despite service, accordingly, I proceed to decide the petition on merits.

I have heard learned counsel for the petitioner-plaintiff, appraised the paper book and of the view that the suit was filed on 07.08.2010 and despite having availed many opportunities, the plaintiff did not examined any witness, resulting into, dismissal of the suit as per the provisions of Order 17 Rule 3 CPC. The appeal preferred was required to be filed within a period of 30 days, but in the process of filing the appeal, 10 months's delay had occurred. It was stated in the application seeking condonation of delay that the petitioner-plaintiff was called by the police of Police Station Jandiala that his case had been dismissed and the defendants were going to raise wall on the suit property. It is, in that backdrop of the matter, the petitioner acquired the knowledge of the dismissal of the suit and in that process, a delay of 10 months had occurred and immediately thereafter, the appeal was filed. I am of the view that aforementioned explanation appears to be a *bona fide* inadvertence/error, though the conduct of the plaintiff had been not diligent in bringing the evidence in support of the averments made in the suit for partition. In my view, the

Court below should not have laid the entire focus for the adjudication of the application seeking condonation of delay, instead decided the appeal on merits. In order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned order, under challenge and the application seeking condonation of delay of 10 months is allowed. The appeal is ordered to be restored to its original number.

Learned counsel for the parties as well as the parties are directed to appear before the lower Appellate Court on 01.05.2018.

The lower Appellate Court shall decide the appeal after effecting the service upon the defendants.

Resultantly, the present revision petition stands allowed subject to the payment of costs of ₹ 10,000/-, which shall be condition precedent. In case, costs as directed is not paid, the respondents shall be at liberty to move an appropriate application for compliance of the order.

28.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No