

CR No.4231 of 2015 (O&M)

{1}

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

CR No.4231 of 2015 (O&M)

Date of decision:28.03.2018

Gurmukh Singh

... Petitioner

Vs.

Prem Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rahul Rampal, Advocate
for the petitioner.

Ms. Abha Rathore, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present revision petition is preferred against the impugned order dated 17.09.2014, whereby an application seeking condonation of delay submitted alongwith appeal preferred against the judgment and decree dated 22.05.2012 passed in civil suit No.1167 of 2008, was dismissed being barred by 184 days.

Mr. Rahul Rampal, learned counsel for the petitioner submitted that petitioner filed the suit for possession and recovery of mesne profits on the basis of sale deed dated 01.11.2007 and issues in the suit were framed after written statement was taken on record on 26.11.2009. The plaintiff could not lead the evidence from 2010 to 2012 and the suit was dismissed by invoking the provisions of Order 17 Rule 3 CPC, vide judgment and decree dated 22.05.2012. The petitioner was never informed about the

dismissal of the suit and on realizing the fact that suit was dismissed under Order 17 Rule 3 CPC, the appeal was preferred before the Lower Appellate Court and in that process, delay of 148 days had occurred. No harm and prejudice would be caused to the respondent in case the appeal is ordered to be heard on merits.

Ms. Abha Rathore, learned counsel appearing on behalf of the respondent submitted that explanation given in the application seeking condonation of delay was bereft of the reasoning as the petitioner was appearing in the criminal proceedings and cannot be permitted to say that he did not have the knowledge of dismissal of the suit. It is a common practice amongst the litigants to put the entire blame on the counsel. In fact, litigants are also expected to know about the outcome of the suit and consult the lawyer from time to time about the fate of the suit. The petitioner was not diligent in pursuing the matter before the trial Court and rightly so, the suit was dismissed and the appeal was also not filed within a period of limitation. No concession should have been granted to such litigants under the expression “in the interest of justice” and prayed for dismissal of the petition.

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

The facts noticed above are not in controversy, i.e., dismissal of the suit under Order 17 Rule 3 CPC and appeal being accompanied by an application seeking condonation of delay of 148 days. The explanation given in the application, prima facie, in my view, does not fall within the

expression “due diligence” and “reasonable cause” but in order to prevent miscarriage of justice and do justice, I deem it appropriate to condone the delay of 148 days in filing the appeal subject to costs of Rs.25,000/- which shall be a condition precedent. The appeal is restored to its original number.

The impugned order is set aside and the revision petition stands allowed. The parties through their counsel are directed to appear before the Court below on 02.05.2018.

The aforementioned observations of mine shall not be construed as an expression of opinion on the merit and de-merit of appeal.

March 28, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No