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

**Civil Revision No.4144 of 2017 (O&M)
Date of Decision: 29.08.2018**

HARBHAJAN KAUR

.....Petitioner

Vs

TEJINDER SINGH AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Prateek Gupta, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 21.04.2017 passed by the Addl. District Judge, Jalandhar whereby an application under Section 5 of the Limitation Act was dismissed.

[2]. Brief facts of the case are that a suit for declaration was filed by the plaintiff through General Power of Attorney Harpreet Singh son of Gurdip Singh. Plaintiff did not appear as witness in the suit. Plaintiff staked her claim on the basis of Will dated 18.12.2001 executed by Teja Singh. The suit was dismissed vide judgment and decree dated 14.07.2014. First appeal was

filed before the lower Appellate Court on 10.11.2014 with a delay of 109 days.

[3]. The application filed under Section 5 of the limitation Act was dismissed by the lower Appellate Court on the ground that the plaintiff/petitioner is living abroad. She did not lead any evidence and the suit was dismissed in default under Order 17 Rule 3 CPC. Once the suit was dismissed on 20.10.2010 and thereafter it was restored on 05.01.2013 on the application filed by the plaintiff/petitioner on 04.11.2010 and direction was issued to the plaintiff to complete her evidence, still no evidence was led and the suit was dismissed under Order 17 Rule 3 CPC.

[4]. Learned counsel for the petitioner submitted that since the petitioner was represented through the General Power of Attorney, who did not inform the petitioner, nor the counsel engaged by the petitioner informed her in time. Ultimately application was filed for obtaining certified copy of judgment and decree dated 14.07.2014 on 26.09.2014. The certified copy was prepared on 13.10.2014 and the same was collected by the petitioner on 28.10.2014 and thereafter first Appeal was filed before the lower Appellate Court on 10.11.2014 along with an application under Section 5 of the Limitation Act. At the time of adjudication of the application under Section 5 of the Limitation Act, the Court cannot comment upon the ultimate merits of the

case arising out of the judgment and decree passed by the trial Court.

[5]. Learned counsel further submitted that the delay has occasioned due to the conduct of previous General Power of Attorney and the counsel engaged by the petitioner. Thereafter the petitioner appointed new General Power of Attorney namely Mandeep Singh son of Lamber Singh and the appeal was filed on 10.11.2014 with a delay of 109 days in its filing. It can be noticed that no third party interests has been created during pendency of the appeal.

[6]. In view of observations made in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399** and **State of Rajasthan and another vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805**, learned counsel contended that the delay in question may be condoned as merits of the case cannot be thrown at the verge of the technicality.

[7]. Learned counsel relied upon **Lanka Venkateshwaru (Dead) by LRs vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363** wherein the Hon'ble Apex Court has condoned the delay of 3703 days in bringing on record the legal representatives of the deceased respondent. In the aforesaid context, it was also held that the delay was due to

insufficiency, inaptitude and negligence of Government Pleader.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. From 14.07.2014 onwards the conduct of the plaintiff/petitioner can be adjudged in terms of prosecuting the remedies in accordance with law. Though there is delay of more than two months in filing the application for obtaining the certified copy of judgment and decree dated 14.07.2014, but the same was claimed to be attributed to the conduct of previous General Power of Attorney and the counsel engaged by the petitioner. The alleged omission and latch on behalf of the petitioner can best be equated by imposing adequate costs against her.

[10]. In **Collector, Land Acquisition Anantnag vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also observed that if the merit of the case is pitted against technicality, merit should prevail. The delay of 109 days in filing the first appeal is not such which may deprive the petitioner from exercise of discretion in her favour for condonation of delay. At the most the cause espoused by the petitioner in the form of first appeal can be decided on merits.

[11]. In view of above, this revision petition is allowed. The impugned order dated 21.04.2017 passed by the Addl. District

Judge, Jalandhar is set aside, however subject to payment of costs of Rs.15,000/- to be deposited with the Registrar General of this Court, who shall further deposit the same in Kerala Chief Minister's Distress Relief Fund towards relief to Kerala flood victims.

[12]. Both the parties are directed to appear before the lower Appellate Court on 20.09.2018 through their counsel. The lower Appellate Court shall make every endeavor to decide the pending appeal at the earliest preferably within a period of nine months from the date of receipt of copy of this order.

August 29, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No