

CR No.5190 of 2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5190 of 2015 (O&M)
Date of decision: 31.05.2018

The Bhateria Cooperative Agricultural Service Society

...Petitioner

Versus

Gurmeet Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Amanpreet Kaur, Advocate for
Mr. H.N.S. Gill, Advocate for the petitioner.

Mr. Ashish Gupta, Advocate for respondents No.1, 2 & 4.

ANIL KSHETARPAL, J. (ORAL)

This revision petition has been filed against order passed by learned First Appellate Court dismissing application for condonation of delay of 1 year, 2 months and 21 days in filing the first appeal and consequently dismissing the appeal also.

Petitioner before this Court is a Cooperative Agriculture Service Society which filed a suit for recovery against the respondents which was dismissed by the trial Court. It has been asserted in the application for condonation of delay that counsel representing the Society did not inform the officials of the Society about the decision of the case and, therefore, the delay had occurred. It has been pleaded that they came to know of the decision only on 23.11.2013 when they received summons from the court of

CR No.5190 of 2015

Additional Civil Judge (Sr. Divn.), Rajpura and the appeal was filed on 24.12.2013 i.e. the next date.

Learned First Appellate Court has held that such assertion submitted by the petitioner is not believable. The First Appellate Court has held that since counsel who was representing the Society before the trial Court was present on each and every date of hearing, therefore, the decision must be in the knowledge of the Society.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents which are part of the record.

In the considered opinion of this Court the First Appellate Court has not addressed the issue which has been pleaded for seeking condonation of delay. It was pleaded that the previous counsel, who was representing the Society before the trial Court, did not inform the Society. A reading of the orders does not show that the learned First Appellate Court ever recorded a finding that the counsel had informed the Society. Still further, Courts must always make an endeavour to decide the cases on merits rather than throw out the same on technicalities. First appeal is an important right available to the parties for getting the decision of the trial Court corrected.

Although this ground has not been taken, however, learned counsel for the petitioner has pointed out that in fact as per the judgment passed by the trial Court, suit was dismissed. However, due to inadvertent mistake when the decree was passed it was mentioned as suit decreed. Application for correction was filed which remained pending and ultimately the decree was corrected only on 01.10.2013.

CR No.5190 of 2015

Keeping in view the aforesaid facts, this Court is of the considered view that delay in filing the appeal deserves to be condoned. Hence, it is condoned and the order under challenge is set aside. Learned First Appellate Court is requested to take up the first appeal on merits and decide the same within six months from the date of receipt of the order. Parties through counsel are directed to appear before the First Appellate Court on July 16, 2018.

(ANIL KSHETARPAL)
JUDGE

May 31, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No