

In the High Court of Punjab and Haryana at Chandigarh

C.R.No.4938 of 2018 (O&M)

Date of decision: August 03, 2018

Usha Chawla

..... Petitioner

Versus

Rohit Girdhar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. L.S. Sekhon Advocate for the petitioner.

AJAY TEWARI, J. (ORAL)

C.M.No.15916-CII of 2018

This is application for condonation of delay of 47 days in filing the present petition.

For the reasons recorded, the application is allowed. Delay of 47 days in filing the petition is condoned.

C.R.No.4938 of 2018

This revision petition has been filed against the concurrent judgments of the Courts below allowing eviction petition against the petitioner. The respondents had filed a petition against the petitioner for eviction on the ground of non-payment of rent.

Admittedly by an order dated 04.12.2017, the provisional rent was assessed @ ₹600/- per month and an order was passed directing the petitioner to deposit an amount of

₹26,000/- within 15 days and the matter was adjourned to 20.12.2017 for payment. On 20.12.2017 since no payment was made, the ejectment order was passed in the presence of counsel for the petitioner. The petitioner then filed an appeal but the same was also dismissed on the ground that she had not paid the assessed amount and that is how the petitioner is before this Court.

Learned counsel has argued that along with the appeal the petitioner had filed an application for condonation of delay and her case was that her counsel had not informed about the order dated 04.12.2017 and she come to know about the order only when execution proceedings were taken out against her.

As per learned counsel, the Appellate Court condoned the delay on this ground but had erred in dismissing the appeal on the same date by holding the petitioner guilty for not making the payment. As per learned counsel once the non-disclosure of the order by the counsel was taken to be adequate cause of condonation of delay in filing the appeal, the petitioner should have been granted another opportunity to pay the rent.

In my considered opinion, this argument cannot succeed. The considerations for condonation of delay are different than considerations for appeal. For the purpose of condonation of delay, a more liberal approach is always taken by the Courts but the key issue in the present petition is whether the non-disclosure by the counsel would be justified for non-payment. It is not the case of the petitioner that she has approached the counsel and yet he did not disclose. The whole case of the petitioner is that it was duty of the counsel to inform her. In my opinion, the duty of the counsel to inform would arise only if the petitioner contacts the counsel. Looked at from this angle, the fault of the petitioner in not contacting her counsel is clearly established. Once that is so, the judgment of the Supreme Court in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation** 2002(1) RCR (Rent) 514 would apply with full force.

Consequently, no further opportunity could have been granted to the petitioner to make the payment.

The revision petition is hereby dismissed.

(AJAY TEWARI)
JUDGE

August 03, 2018

jt

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