

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.6226 of 2017(O&M)  
Date of Decision: 18.09.2018

Chanan Singh and others .....Petitioners  
Versus  
Swaran Kaur and others .....Respondents

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

Present: Mr. Atul Jain, Advocate  
for the petitioners.

Ms Paramjit Deol, Advocate  
for the respondents.

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**RAJ MOHAN SINGH, J.(Oral)**

**CM No.19506-CII of 2017**

Prayer in this application is for bringing on record legal representatives of deceased Norang Singh (petitioner No.2).

For the reasons mentioned in the application, the same is allowed. Legal representatives as shown in para No.3 of the application are ordered to be brought on record subject to all just exceptions.

Amended memo of parties is taken on record.

**Main case**

[1]. Petitioners have assailed the order dated 01.08.2017 passed by Additional District Judge, Patiala, whereby the

application under Section 5 of the Limitation Act for condonation of delay in filing the appeal before the Lower Appellate Court was dismissed.

[2]. Delay was of 176 days in filing the appeal. As a consequence of dismissal of the application, the appeal was also dismissed by the Lower Appellate Court.

[3]. Perusal of the record would show that a joint written statement was filed before the trial Court. Evidence of the defendants was closed on 18.09.2014. Petitioners were proceeded against *ex parte* on 15.10.2014. The said order was never assailed by the defendants/petitioners.

[4]. Trial Court ultimately decreed the suit *ex parte* vide judgment and decree dated 31.10.2014. Petitioners preferred to file appeal before the Lower Appellate Court instead of filing application under Order 9 Rule 13 CPC.

[5]. Since both the remedies were available to the petitioners, therefore, filing of appeal against the judgment and decree dated 31.10.2014 was maintainable. Along with appeal, an application under Section 5 of the Limitation Act was also filed on 26.05.2015. In this manner, delay of 176 days in filing the appeal was occurred.

[6]. Lower Appellate Court on the basis of material brought before it, dismissed the application under Section 5 of the

Limitation Act vide the impugned order. As a result of dismissal of the application, the appeal was also dismissed.

[7]. According to Article 122 of the Limitation Act, the time prescribed for filing the appeal was of 30 days and limitation upto 01.12.2014 was available. Petitioners could not bring on record material to justify the delay at the first instance.

[8]. Perusal of the record would show that an application for obtaining certified copy of the judgment and decree dated 31.10.2014 was filed and the same was delivered to the petitioner on 26.03.2015. No appeal was filed against such certified copy. Explanation given by the petitioners in respect of the person to whom the said copy was delivered would remain a debatable issue. On filing the second application, the certified copy was delivered to the petitioners on 25.05.2015, against which appeal was preferred before the Lower Appellate Court. Both the parties are at variance in terms of sufficiency of cause projected before the Lower Appellate Court.

[9]. Learned counsel for the petitioners submitted that in view of observations made by the Hon'ble Apex Court 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**, delay in filing the appeal

can be condoned and the matter can be heard on merits as the meritorious matter cannot be pitted against the mere technicalities. Learned counsel also referred to **Lanka Venkateshwaru (Dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, wherein Hon'ble Apex Court has condoned the delay of 3703 days in the context of default in bringing legal representatives of concerned party on record. It was held that delay had occasioned due to insufficiency, inaptitude and negligence of Government Pleader.

[10]. In **Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107**, the Hon'ble Apex Court has also observed that there cannot be any uniform jacket to assess *bona fide* in explaining each and every hours/minutes and seconds. Merits of a case cannot be judged against the threshold of technicalities. In this case, the delay was not such which may deprive the petitioners from exercise of discretion in his favour for condonation of delay. At the most, the cause espoused by the petitioners in the form of first appeal can be decided on merits subject to imposition of terms and conditions including Section 35-B CPC. Apparently, no third party interest has been created in the present case.

[11]. For the reasons recorded hereinabove and on the basis of precedents cited before this Court, I deem it appropriate to

condone the delay of 176 days in filing the first appeal before the Lower Appellate Court. This revision petition is accordingly allowed, however, subject to payment of costs of Rs.20,000/- to be paid to respondent No.1 herein. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court in the aforesaid context.

[12]. Both the parties are directed to appear before the Lower Appellate Court on 04.10.2018.

September 18, 2018

*Prince*

**(RAJ MOHAN SINGH)  
JUDGE**

**Whether reasoned/speaking  
Whether reportable**

**Yes/No  
Yes/No**