

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

CR No.7250 of 2017 (O&M)  
Date of Decision : 25.09.2018.

Harbhajan Singh

...Petitioner

Versus

M/s J.D. Trading Company

....Respondent

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. B.P.S. Virk, Advocate for the petitioner.

Mr. Prince Goyal, Advocate for the respondent.

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**B.S.WALIA, J.** (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 22.03.2017 (Annexure P-1), passed by the learned District Judge, Kaithal, dismissing the application for condonation of 113 days' delay in late filing of the appeal against dismissal of application under Order 9 Rule 13 of Code of Civil Procedure (hereinafter referred to as 'CPC') and consequently the appeal on the ground of delay as well as order dated 30.05.2016 (Annexure P-2), passed by the learned Addl. Civil Judge (Senior Division), Gulha, dismissing the application under Order 9 Rule 13 CPC.

2. The learned District Judge, passed the impugned order while taking note of the fact that order challenged had been passed on 30.05.2016, whereas copy thereof was applied on 22.06.2016 and was received on 26.07.2016, whereafter the petitioner approached

Shri Bhagwant Pal Singh, Advocate, High Court of Punjab and Haryana at Chandigarh who told him that the appeal was maintainable before the District Judge and not before the High Court, whereupon the petitioner engaged a counsel in District Court who pointed out certain irregularities in issuance of certified copy of order, on account of which, the petitioner again applied for certified copy of order on 14.10.2016, which was delivered on 18.10.2016 and in the process, delay of 113 days occurred in late filing of the appeal, which was claimed to be bonafide.

3. The learned District Judge further took into account that certified copy of impugned order delivered on 26.07.2016 did not appear to be irregular nor it was the case of the petitioner that any objection had been raised to the certified copy by the judicial branch and on that basis concluded that the petitioner had again applied for certified copy of 14.10.2016 only to make a ground for filing the appeal late. Therefore, no sufficient cause was made out to condone the delay and that condoning such a long delay without proof of sufficient cause by the petitioner would amount to high jacking the statutory provisions of the Limitation Act and that in case delay was condoned, the same would seriously prejudice the right of the respondent.

4. Learned counsel for the petitioner contended that the petitioner did not stand to gain anything by delaying the filing of the appeal and the delay has occurred on account of the petitioner inadvertently having approached the Counsel at High Court, who informed the petitioner of the maintainability of the appeal before the District Judge and not the High Court, whereupon the petitioner engaged a counsel in District Court

but had to apply for certified copy again on 14.10.2016 on account of alleged irregularities in the certified copy which was supplied on 18.10.2016, where after the appeal was filed with delay of 113 days.

5. A perusal of Annexure P-3 reveals that the respondent-plaintiff had filed a suit for recovery of ₹1,86,325/- i.e. ₹1,45,000/- as principal amount plus ₹41,325/- as interest calculated upto the date of filing of the suit i.e. 13.08.2008. Although the petitioner may not have been as vigilant as he ought to have been in institution of the appeal yet the fact remains that his conduct as a whole does not warrant to castigate him as irresponsible litigant particularly in view of his having approached the High Court Counsel as also the affidavit of the Advocate of the High Court having been produced before the learned First Appellate Court to the effect that the petitioner approached him and he advised the petitioner that the appeal was maintainable before the District Judge and not before the High Court. No doubt the petitioner ought to have been more vigilant but his failure to adopt such extra vigilance could not be a ground to oust him from the litigation with respect to the defence in the civil suit with regard to the recovery of amount claimed from him. Hon'ble the Supreme Court in M.K. Prasad vs. P. Arumugam 2001 (6) SCC 176 while allowing an application for condonation of 554 days in filing of application for setting aside of ex parte decree, observed as under:-

*“In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though*

*the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case we set aside the order impugned and condone the delay in filing the application for setting aside ex-parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex-parte decree as well.”*

6. In the instant case, there is delay of only 113 days. The petitioner is an agriculturist and claims to be uneducated. No doubt he ought to have been more vigilant but the fact that he approached the Counsel at High Court who advised him that the appeal was maintainable before the District Judge goes to show that the petitioner had taken steps to

file an appeal. In the circumstances without adopting a hyper technical approach, it is deemed appropriate to set aside the impugned order dated 22.03.2017 (Annexure P-1), dismissing the application seeking condonation of 113 days delay and consequently the appeal, subject to payment of costs of ₹22,000/- by the petitioner to the respondent and remand the matter to the learned District Judge, to consider and decide the appeal on merits, in accordance with law.

7. Accordingly, revision petition is allowed to the extent as noted above and delay of 113 days in late filing of the appeal is condoned. Parties through counsel are directed to put in appearance before the learned District Judge, Kaithal, on 09.01.2019.

**(B.S.WALIA)**  
**JUDGE**

25.09.2018.  
rajesh.k.khurana

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