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

**Civil Revision No.8010 of 2016 (O&M)
Date of Decision: 19.07.2018**

Baljinder Singh

.....Petitioner

Vs

Santokh Singh & others

....Respondents

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

Present: Mr. Samuel Gill, Advocate for
Mr. R.D. Bawa, Advocate
for the petitioner.

Mr. Gagandeep Singh Sirphikhi, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 03.09.2016 passed by the Addl. District Judge, Gurdaspur whereby application under Section 5 of the Limitation Act was dismissed and consequently appeal was also dismissed.

[2]. Brief facts of the case are that the petitioner filed an appeal against the judgment and decree dated 27.04.2015 passed by the Civil Judge (Jr. Divn.) Batala. The said appeal was accompanied by an application under Order 41 Rule 3-A

CPC read with Section 5 of the Limitation Act for condonation of delay of six months and eight days in filing the appeal. Petitioner sought condonation of delay on the basis of family circumstances owing to ill-health of his old parents and emergent situation wherein he had to go to U.P. for some time on account of deteriorated condition of uncle of his wife, who is resident of District Bijnaur in U.P. Father-in-law of the petitioner is also of advance age and is seriously ill.

[3]. Learned counsel for the petitioner submitted that the facts pleaded in the application could have been tested with reference to the objection made by the respondents and by way of asking the petitioner to lead evidence to prove the same. Delay in filing the appeal cannot be equated with the limitation for filing the suit. On sufficiency of good cause for not filing the appeal in time, the delay can be condoned.

[4]. Learned counsel by relying upon the **Collector, Land Acquisition, Anantnag vs. Mst. Katiju, (1987) 2 SCC 107; Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649; State of Rajasthan and another vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805** and **Mrs. Saroj and others vs. Sh. Baljeet Singh and another, 2010(3)**

PIR 136 contended that the Court should be liberal so as to advance substantial cause of justice instead of dismissing the appeal on technical ground. The explanation furnished by the appellant cannot be described wholly unacceptable as it is a case of assertion and denial at this stage. If there is some omission on the part of petitioner in not bringing on record the nature of ailment viz.-a-viz. medical record, the same cannot be wholly unacceptable. The delay in question is not such so as to presume any 3rd party interest during the intervening period.

[5]. On the other hand, learned counsel for the respondents by relying on **Dr. Tarun Bhardwaj vs. Kusum Lata, 2017(1) PLR 348**; **Parminder Kaur @ Pammi vs. Darshan Singh, 2011(52) R.C.R. (Civil) 677**; **Sher Singh vs. Dhola Singh and others, 2016(2) PLR 515** and **Basawaraj and another vs. Special Land Acquisition Officer, 2014(1) R.C.R. (Civil) 603** contended that though liberal approach is required to be adopted in condonation of delay in filing of the appeal, but at the same time sufficient cause has to be liberally interrupted only in those cases where stand of the applicant/appellant is found to be honest and *bona fide*. Statute of limitation is founded on public policy and is aimed to secure peace in community. Unlimited limitation may lead to sense of uncertainty. The application has to be decided on the basis of merits of each

case and no straightjacket formula can be adopted.

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

[7]. There cannot be any dispute with regard to the observations made by different Courts. The application has to be decided on the basis of its own merits. The Court is always required to take pragmatic approach in deciding the *lis* on merits. The cause of justice cannot be allowed to be thrown at the threshold of technicality.

[8]. In Civil Revision No.2688 of 2015 titled '*Market Committee, Pilukhera and Anr. vs. Rameshwar Parsad*' decided on 14.07.2017, this Court after considering the relevant precedents condoned the delay of 242 days in filing the first appeal. It is true that no straightjacket formula can be adopted in every case, but the facts and circumstances of the present case require that the *lis* should be decided by the lower Appellate Court on merits. The circumstances pleaded by the applicant/petitioner in the application under Section 5 of the Limitation Act cannot be ignored outrightly for want of medical evidence.

[9]. For the reasons recorded above, I deem it appropriate to condone the delay of six months eight days in filing the

appeal before the lower Appellate Court. Consequently, the impugned order dated 03.09.2016 passed by the Addl. District Judge, Gurdaspur is set aside. This revision petition is allowed, subject to payment of cost of Rs.10,000/- to be deposited in the District Legal Services Authority, Gurdaspur. Payment of cost shall be the condition precedent before granting any indulgence by the lower Appellate Court in the aforesaid context.

[10]. Both the parties are directed to appear before the lower Appellate Court on 10.08.2018.

July 19, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No