

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

**Civil Revision No.8856 of 2014 (O&M)
Date of Decision: 16.07.2018**

SHARANJIT

.....Petitioner

Vs

GURINDER SINGH AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kewal Krishan, Advocate for
Mr.Premjit Kalia, Advocate
for the petitioners.

Mr. Kushagra Mahajan, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 9.9.2014 passed by the lower Appellate Court, vide which application filed by him under Section 5 of the Limitation Act for condoning the delay in filing the appeal was dismissed and as a consequence thereto, appeal was also dismissed being time barred.

Suit of plaintiff-Gurinder Singh for possession by way of specific performance of the agreement to sell dated 10.3.2008 was decreed by the Civil Judge (Jr.Divn.), Amritsar vide judgment and decree dated 17.8.2013. Against the aforesaid judgment and decree, appeal was preferred by the defendant-petitioner along with an

application under Section 5 of the Limitation Act for condoning the delay of 32 days in filing the appeal. The delay in filing the appeal was sought to be explained on the ground of illness of the petitioner and his confinement to bed for a period of about five months. Petitioner stated that during the said period he could not contact his counsel and that resulted in delay in filing the appeal. His application was rejected on the ground that the petitioner has not mentioned the ailment for which he was confined to bed for such a long period. Petitioner neither produced any prescription slip of the doctor certifying his illness nor any doctor was examined.

Learned counsel for the petitioner relied upon the judgments of the Apex Court in Collector, Land Acquisition, Anantnag vs. Mst.Katiji (1987) 2 SCC 107, Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others 2013 (12) SCC 649 and Mrs. Saroj and others vs. Sh.Baljeet Singh and another 2010 (3) PLR 136 and contended that the Court is always liberal so as to advance substantial cause of justice instead of dismissing the appeal on technical ground. The explanation furnished by the petitioner cannot be treated to be wholly unacceptable. If there are some omissions in not bringing on record the nature of ailment vis-a-vis medical record, the same cannot be discarded wholly. The delay of 32 days in filing the appeal was not inordinate. No third party interest has come to fore during the intervening period.

In view of aforesaid precedents, I deem it appropriate to condone the delay of 32 days in filing the first appeal.

Consequently, impugned order dated 9.9.2014 passed by the District Judge, Amritsar is set aside. Revision petition is allowed, however subject to payment of costs of Rs.10,000/- to be paid to the respondent-plaintiff. Payment of costs shall be the condition precedent before granting any indulgence by the lower Appellate Court in the aforesaid context.

Both the parties are directed to appear before the lower Appellate Court on 7.8.2018.

July 16, 2018
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(RAJ MOHAN SINGH)
JUDGE

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