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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8959 of 2017
Date of Decision:02.02.2018

Pritam Singh

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.8963 of 2017

Vikrant Nagpal

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.9015 of 2017

Pardeep Kumar

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.9035 of 2017

Surinder Lal Vij

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.208 of 2018

Banarsi Dass

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.234 of 2018

Mohanjit

...Petitioner

Versus

Municipal Corporation, Jalandhar and another

...Respondents

CR No.235 of 2018

M/s Dream Land and another

...Petitioners

Versus

Municipal Corporation, Jalandhar

...Respondent

CR No.271 of 2018

Rajni Bala

...Petitioner

Versus

Municipal Corporation, Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Arora, Advocate
for the petitioner in CR Nos.8959,
8963, 9015 and 9035 of 2017.

Mr. S.K. Bawa, Advocate
for the petitioner(s) in CR Nos.208,
234, 235 and 271 of 2018.

Mr. Sumit Jain, Advocate
for the respondent in CR Nos.8959,
8963, 9015 and 9035 of 2017.

ANIL KSHETARPAL, J.(Oral)

By this order, I shall be disposing of CR Nos.8959, 8963, 9015, 9035 of 2017 and CR Nos.208, 234, 235 and 271 of 2018 as common issue requires determination. All these revision petitions have been filed against orders passed by the learned First Appellate Court dismissing the application for condonation of delay, which is at the most two months. In some cases,

the delay is even less than one month.

The learned First Appellate Court has dismissed the application seeking condonation of delay on the ground that the petitioner(s) had initially filed a civil suit against an order passed by the Municipal Corporation for removal of encroachment and since their application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for temporary injunction was dismissed and appeal against the order was dismissed, therefore, it is a case of forum shopping.

As noticed earlier, the delay is at the most two months. There is an order passed by the Municipal Corporation ordering removal of encroachment. A statutory appeal is provided under Section 246(10) of the Municipal Corporation Act, 1976 against the aforesaid order.

It is not disputed before me that the learned First Appellate Court has the power to condone delay as there is no statutory restriction.

Taking into consideration these facts, particularly when the petitioners have filed their respective appeals as provided in the Statute, this Court is of the considered opinion that the learned First Appellate Court ought to have condoned the delay and heard the appeals on merits.

It is not in dispute that all the petitioners had immediately filed a civil suit against the order passed by the Municipal Corporation for removal of encroachment. Thus, the petitioners had resorted to a remedy, which was not proper.

In view thereof, the petitioners would also be entitled to the benefit under Section 14 of the Limitation Act.

Be that as it may, the order under challenge is set aside. Delay

Learned counsel for the Municipal Corporation has submitted that the petitioners have encroached upon the municipal land and by keeping the litigation pending, unauthorized occupation of the land continues.

This Court is not finally opining that whether there is any encroachment or not because this would be issue to be determined by the learned First Appellate Court. However, taking into consideration the request made by the counsel for the Municipal Corporation, learned First Appellate Court is requested to decide the appeals within a period of two months from the date of receipt of certified copy of the order.

Parties through their counsel are directed to appear before the learned First Appellate Court on 20.02.2018.

Revisions allowed.

02.02.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No