

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

**CM-785 to 787-CI-2018 in/and
RFA No.294 of 2018
Decided on : 16.11.2018**

R.K. Kaushik

... Appellant

Versus

Haryana State and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gaurav Aggarwal, Advocate
for the appellant.

Mr. Shivendra Swaroop, AAG, Haryana.

G.S. Sandhawalia, J. (Oral)

CM-785-CI-2018

Exemption application is allowed, as prayed for.

CM stands disposed of.

Main appeal (O&M)

Counsel very fairly submits that in similar circumstances application under Order 1 Rule 10 CPC seeking leave to file appeal which was barred by 2370 days has been dismissed in **RFA No.663 of 2018 'Trillanium Technologies Ltd. Vs. Haryana State and others'** decided on 12.11.2018. It is submitted that the said order would cover the dispute herein and the appellant can seek his remedy before the Executing Court. The relevant part of the order passed in the said appeal reads as under:-

“(4) Once the appellant has got an alternative and efficacious remedy available and the benefit has already been taken in execution proceedings and it is always open for the

appellant to file a fresh application before the executing court and the appellant cannot be allowed to change forum to suit his convenience.

(5) Resultantly, once the appellant has an alternative and efficacious remedy and has already availed of it, the question of condoning the delay and allowing the appellant to file the appeal would not arise. It is not the appellant's right as such is being taken away to seek the same amount of enhancement as other landowners and therefore, this court is of the opinion that no ground is made out as such to allow the application for impleadment i.e. CM-1640-CI-2018 and permit to file the appeal after the inordinate delay which has taken place and sufficient cause as such is not made out. Resultantly, both the applications are dismissed and thus the appeal also stands dismissed.

(6) Needless to say that it is open to the appellant to avail the alternative remedy in accordance with law and this order will not debar the appellant as such."

Accordingly, keeping in view the above, the applications under Order 1 Rule 10 CPC and for condoning the delay of 2353 days in filing the appeal alongwith the appeal are dismissed, in the same terms.

NOVEMBER 16, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No