

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5925 of 2015 (O&M)

Date of Decision: May 08, 2018

Seeto

...Appellant

Versus

Veer Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellant.

AMIT RAWAL, J. (Oral)

The present appeal, accompanied by an application seeking condonation of delay of 216 days in filing, is at the instance of the plaintiff against the dismissal of the suit seeking declaration that the property shown in green colour 2'-8" wide and 122'-6" in length shown in the site plan being part and parcel of Khasra No.36/M 11 (2-13), 35M//15/2 (0-16) is owned by the plaintiff and other co-owner, situated in Village Suner, Tehsil Zira with mandatory injunction directing the defendants to remove Malba and vacate the portion shown by words ABCFED.

The judgment and decree rendered by the Lower Appellate Court is dated 4.11.2014. As per the contents of the application, the appellant was apprised by the Counsel that the appeal could be filed upto September, 2015 and, therefore, there was delay. The contents of the application read as under:-

"1. That the accompanying appeal is being filed along with this application and it may be considered as part and parcel of

this application.

2. *That the delay of days in filing the appeal was caused as the appellant is an old aged person suffering from various old age ailments and is the only person in the family to arrange for necessary documentation and completing formalities for filing the appeal. The appellant was not aware of the fact that he has further remedy to challenge the order/judgment passed by lower courts by way of filing the regular second appeal before the Hon'ble High Court as some other counsel gave wrong advice to the appellant that she has exhausted all her remedies.*

3. *That the appellant was apprised by his counsel in month of September 2015 that she can file regular second appeal before this Hon'ble Court and the present appeal has been filed immediately without wasting further time. In the process the delay of 216 days is caused.*

3. *That the delay of days in filing the appeal is not intentional and the delay is not caused because of negligence on the part of appellant or his counsel.*

Therefore, it is most respectfully prayed that the delay of 216 days in filing the appeal may kindly be condoned in the interest of justice equity and fair play otherwise the irreparable loss would be caused to the appellant as there is very much likelihood that the accompanying appeal will succeed.”

No doubt, the Court should not have stringent in condoning the delay in case it had been on account of the diligence and bonafide, but a litigant with such prayer cannot be permitted to pursue or file the case at his/her own whims and fancies. The explanation *ibid*, in my view, does not conform to the parameters laid down in the judgment rendered by the Hon'ble Supreme Court in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12**

Supreme Court Cases 649. Thus, the application for delay is bereft of the

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 $\{3\}$

reasoning. The same is dismissed. Resultantly, the appeal is also dismissed.

May 08, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No