

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

109

CM-9074-C-2014 in/and
RSA No.3934 of 2014 (O & M)
Date of Decision:23.04.2018

Deep Kaur and others

...Appellants

Versus

Disho and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naresh Prabhakar, Advocate
for the appellants.

Ms. Sushma Sharma, Advocate for
Mr. Ramesh Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Although, notice in the miscellaneous application for condonation of delay of 477 days was issued and service was not complete, however, taking into consideration that the appeal is pending for the last 4 years and some of the respondents have been served, the appeal was posted for preliminary hearing.

Learned counsel for the parties have been heard at length. It is a case where the plaintiffs filed a suit for declaration on 18.01.2008. Learned trial Court has noticed that the plaintiff failed to lead any evidence in support of their case in spite of grant of sufficient opportunities. The suit was dismissed under Order 17 Rule 3 of the Code of Civil Procedure. First appeal was also dismissed on 30.10.2012. Thereafter, second appeal was filed after a delay of 477 days.

Learned counsel for the appellants has argued that both the

plaintiffs had died on 01.01.2010 and 30.03.2009. He submits that power of attorney holder of the plaintiff was not knowing these facts and, therefore, the evidence was not produced.

It may be noticed that first appeal was also filed by the plaintiffs alleged to have died before filing of the appeal. The appeal was filed through same power of attorney who was prosecuting the case in the learned trial Court. Before the learned First Appellate Court , no application was filed for additional evidence.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the orders passed by the Courts below.

Hence regular second appeal is dismissed.

In view of the order passed on merits, no further order is required to be passed in the application for condonation of delay.

23.04.2018
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(ANIL KSHETARPAL)
JUDGE

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