

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

-.-

RSA 1945 of 2017 (O&M)  
Date of decision: 07.12.2018

*Varinder Kumar*

*....Appellant*

vs

*Ravinder Kumar and others*

*.....Respondents*

***Coram: Hon'ble Mrs. Justice Rekha Mittal***

Present : Mr. Rakesh Kumar, Advocate  
for the appellant

Mr. S M Sharma, Advocate  
for LRS of respondent No. 1

-.-

**Rekha Mittal, J. (Oral)**

**CM 4639-C of 2017**

Prayer in this application is for condoning delay of 107 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 107 days in re-filing the appeal stands condoned.

**Main case**

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by respondent/plaintiff for partition by metes and bounds, by separating 1/5<sup>th</sup> share of the plaintiff and delivering possession of his share to the plaintiff in the properties, detailed in head note of the plaint was decreed by the trial Court vide

judgment and decree dated 03.11.1998.

Against the judgment and decree passed by the trial Court, one of the defendants - Balram Sharma filed first appeal before the Additional District Judge, Hoshiarpur wherein the present appellant Varinder Kumar was impleaded as one of the pro forma respondents. Appeal filed by Balram Sharma was dismissed by the Additional District Judge, Hoshiarpur vide judgment dated 27.07.2016.

The present regular second appeal has been filed by Varinder Kumar, one of the pro forma respondents before the first appellate Court and not by Balram Sharma who assailed the judgment and decree passed by the trial Court by filing first appeal.

On 11.10.2018, this Court issued notice of motion to respondent No. 1 (plaintiff) limited to explore possibility of an amicable settlement between the parties. A relevant extract therefrom reads as follows:-

*“Counsel for the appellant would state that he does not press the appeal on merits but as dispute is among the family members, respondent No. 1/plaintiff (since deceased) now represented by his legal representatives may be called upon to explore possibility of an amicable settlement.*

*Notice of motion to respondent No. 1 limited to explore possibility of an amicable settlement between the parties.*

*The appellant shall deposit a sum of Rs.25,000.00 in the Registry of the Court towards litigation expenses within a period of fifteen days, to be paid to legal representatives of respondent No. 1. Notice shall be issued to them after necessary deposit.*

*Legal representatives of respondent No. 1 can appear in the Court in person as they have been called upon to appear to explore possibility of an amicable settlement.*

*Be listed on 12.11.2018.*

*In the meantime, the parties shall maintain status with regard to ownership and possession till the next date of hearing.*

*The appellant shall ensure service of respondent No. 1 now represented by legal representatives before the next date of hearing, failing which the stay shall stand vacated automatically.*

*Process dasti only.*

*Copy of order be appended with the notice.”*

Shri S. M Sharma, Advocate counsel for respondent No. 1 would state that there is no possibility of any amicable settlement between the parties and the appeal may be disposed of. In view of the above, as respondent No. 1 now represented by his legal representatives are not willing even to talk about settlement, there is no alternative with the Court except to dispose of the appeal.

Disposed of accordingly. However, the appellant would be at liberty to raise plea (s) in accordance with law, in proceedings for final decree.

The registry is directed to release Rs.25,000.00 deposited by the appellant to legal representatives of respondent No. 1.

(Rekha Mittal)  
Judge

07.12.2018  
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