

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 11035-C of 2017 in/and
RSA No. 4241 of 2017(O&M)
Date of Decision:23.10.2018.**

Madan Lal

---Appellant

vs.

Gita Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.A.Sheoran, Advocate
for the applicant-appellant

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 20.8.2018 passed by the District Judge, Bhiwani whereby judgment and decreed passed by the Addl. Civil Judge (Senior Division), Bhiwani vide judgment and decree dated 5.12.2007 decreeing suit of the appellant-plaintiff, has been set aside and suit filed by the appellant-plaintiff for perpetual injunction was dismissed.

Feeling dissatisfied, Madan Lal filed the present appeal initially in the year 2009 but finally refiled the same in August 2017. Along with the appeal, an application (CM No.11035-C of 2017)under Section 151 of the Code of Civil Procedure, 1908 (in short 'the Code') for condoning delay of 2863 days in re-filing the appeal has been filed.

Counsel for the applicant-appellant, in line with the allegations raised in the application would contend that there are sufficient grounds and justifiable reasons to condone delay in refiling the appeal. It is further argued that as per settled position in law, the Court is required to adopt a liberal approach while dealing with an application for condonation of delay so that meritorious claims are not thrown over-board at the threshold on technical considerations.

I have heard counsel for the applicant-appellant, perused the averments raised in the application supported by an affidavit of Madan Lal. A relevant extract from paras 2 and 3 of the application reads thus:-

“2.That the applicant-appellant preferred the above noted appeal well within time and the respondent after coming to know about the filing of the above noted appeal, did not opt to demolish the wall and was agreed to make the settlement before the respectable of the village. As a result of which the applicant-appellant instructed his counsel to keep the above noted appeal pending as the proceedings for settlement are on the way.

3. That the above noted appeal was returned by the Registry on 23/092009 and as per the asking of the applicant-appellant the above noted appeal was not refilled. The applicant-appellant now again instructed the counsel to file the case as the respondent is not ready to arrive at any settlement and now the above noted appeal was refilled on 28.08.2017 and the registry raised an objection for explaining the delay in refiling the

same.”

When the facts and circumstances of the present case are examined in the light of judgment of this court in CR No. 858 of 2011 decided on 6.10.2018 “**Sharwan Kumar and others vs. Ved Parkash and others**” there is no sufficient cause for condoning inordinate delay of 2863 days in refiling the appeal. As a consequence, application for condonation of delay in refiling the appeal is liable to be dismissed and ordered accordingly. As application for condonation of delay in refiling the appeal has been dismissed, the appeal is dismissed being barred by limitation. No order as to costs.

(Rekha Mittal)
Judge

23.10.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No