

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5509 of 2017 (O&M)

Date of Decision.16.01.2018

Darshan Lal

.....Appellant

Vs

Mohan Singh and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Agnihotri, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

C.M. No.14586-C of 2017

For the reasons stated in the application, delay of 10 days in
refilling the appeal is condoned.

Application is allowed.

RSA No.5509 of 2017 (O&M)

The present appeal has been preferred by the appellant-plaintiff
against the concurrent finding of fact whereby the suit claiming the following
relief has been dismissed by both the Courts below:-

*“Suit for possession of land measuring 1 Kanal 13 Marlas
comprised in Khewat No.409 Khatoni No.449 and Khata
No.15//22/1(2-9), being 1600/2368 share situated in village Ram
Tatwali HB No.470 Tehsil Dasuya District Hoshiarpur on the
basis of sale deed dated 5.3.1989 and recorded in red ink note in
jamabandi for the year 1986-87 and putting the plaintiff in
possession over the suit land which has been illegally encroached
by the defendant. In the alternative, suit for possession of the
encroached portion and suit for permanent injunction restraining*

the defendant from raising any sort of construction or changing the nature of the suit property in any manner.”

The appeal is also accompanied by an application seeking condonation of delay of 1316 days.

Mr. Sunil Agnihotri, learned counsel appearing on behalf of the appellant-plaintiff submits that the delay was on account of reasons mentioned in the application itself, which cannot be attributed to the appellant. In support of his contention, he relies upon the judgment of the Hon’ble Supreme Court rendered in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649**, thus, urges this Court for condoning the delay.

On merit, he submits that the possession of the appellant-plaintiff qua aforementioned land was admitted by virtue of sale deed dated 05.03.1989, though the defendant had set up a claim that he had become owner of the suit property by way of sale deed dated 29.07.1983. The Courts below have failed to observe the aforementioned fact, therefore, there is illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. The principles culled out in **Esha Bhattacharjee’s case** (*supra*) are no longer *res integra* but the fact of the matter is that the appellant-plaintiff has miserably failed to explain the delay and the reasons assigned in the application as enumerated in paragraph 3 cannot be said to be falling within the aforementioned principles, therefore, there is no merit in the application for condonation of delay.

Even otherwise on merits, the appellant has failed to prove any demarcation report to prove the possession of the property or any other document except oral statement, which would not suffice the requirement of discharging onus as per Section 101 of the Indian Evidence Act.

The appellant has failed to make out a case of illegality and perversity to enable this Court to interfere with concurrent finding of fact rendered by both the Courts below on preponderance of evidence, much less, no substantial question for law arises for determination by this Court. No ground for interference is made out. The appeal is dismissed both on the ground of limitation and on merit.

January 16, 2018
Pankaj*

(AMIT RAWAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No