

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

CM-15407-C-2018 in/and
RSA-5578-2018
Date of Decision: 04.10.2018

Baddhan @ Badhan through his LRs and another -- Appellants

Versus

Tajmal Hussain --Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr.Shiva Khurmi, Advocate
for the appellants.

TEJINDER SINGH DHINDSA.J.

Plaintiff, Tajmal Hussain filed a suit seeking a decree for mandatory injunction directing the defendants to remove the illegal encroachment from the *rasta* in question shown in red colour in the site plan and to remove the obstruction from Mark-D of the suit property so as to restore the same to its original nature prior to the encroachment. Suit of the plaintiff was dismissed by the trial Court on 20.01.2012. Civil appeal having been preferred by the plaintiff, the same has been accepted vide judgment dated 20.03.2013 passed by the learned Additional District Judge, Nuh and thereby decreeing the suit.

Resultantly, the defendants/appellants are in second appeal before this Court.

The instant appeal is accompanied by an application seeking condonation of delay of 1876 days. Counsel for the applicants/appellants has made submissions for condonation in terms of the averments contained in the application. It has been averred that the appellants are poor persons

and as such could not arrange the funds to engage an advocate. It has further been mentioned that appellant/defendant No.1 Baddhan @ Badhan expired on 22.06.2013 and on account of which the delay has occurred.

Having heard counsel for the applicants/appellants, this Court is of the considered view that there would be no justification for condoning the delay of 1876 days.

The Apex Court has dealt and examined the aspect of delay in **Basawaraj and another Vs. Special Land Acquisition Officer, 2014 (1) R.C.R. (Civil) 603**, wherein it was observed as under:-

“The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

In the present case, the condonation of 1876 days is sought on

the ground that the applicants were poor persons and that one of them had expired in the year 2013. The justification sought to be set forth in the application seeking condonation cannot be accepted. There are no pleadings as regards the grave financial difficulty that was being faced by the applicants/appellants for such a long period of time. Even if applicant/appellant No.1 Baddhan had died in the year 2013, the matter could have been agitated further through his legal heirs and by applicant/appellant No.2. The application seeking condonation has been filed in routine and a casual manner. This Court would have no hesitation in observing that the applicants/ appellants have not acted diligently in the matter and the reasons furnished seeking condonation are not well founded. The expression "sufficient cause" to condone delay would arise only if adequate, cogent and credible reasons are set forth.

In view of the above, the justification put forth at the hands of the applicants/appellants seeking condonation of delay of 1876 days in filing the appeal cannot be accepted.

Application for condonation of delay is dismissed.

Consequently, the appeal is also dismissed being time barred.

(TEJINDER SINGH DHINDSA)
JUDGE

04.10.2018
anju

- i) Whether speaking/reasoned? Yes/No
- ii) Whether reportable? Yes/No