

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

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

Sr. No.293-a

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)
DECIDED ON: September 04, 2018**

MOHINDER KUMAR

..PETITIONER

VERSUS

GURNAM SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Balbir Singh Sewak, Advocate,
for the applicant-petitioner.

Mr. Gaurav Singla, Advocate,
for the non-applicant.

JASPAL SINGH, J.

CM No.23596-CII of 2017 in RA-CR No.191-CII of 2017

This is an application for condonation of delay of 166 days in
filing the present review application.

Heard.

In view of the contents mentioned in the application and the
reasons put forth by the applicant-petitioner, delay of 166 days in filing the
present review application is condoned.

Accordingly, application stands allowed.

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

CM No.18665-CII of 2018 in RA-CR No.191-CII of 2017

Application is allowed as prayed for and short reply by way of affidavit on behalf of the applicant-respondent to the review application is taken on record.

RA-CR No.191-CII of 2017 in CR No.2645 of 2017 (O&M)

By virtue of the instant review application preferred under Article 227 of the Constitution of India read with Section 114, Order 47 Rule 1 and Section 151 CPC, applicant-petitioner has sought review of the order dated 20.04.2017 passed by this Court in Civil Revision No.2645 of 2017.

2. Undisputed facts, in brief, giving rise to the instant application are that applicant/petitioner preferred suit for possession as owner by way of specific performance on the basis of an agreement to sell dated 24.12.2004 executed by the respondent. However, the said suit was dismissed vide judgment and decree dated 11.02.2014 passed by Additional Civil Judge (Senior Division), Dera Bassi. Aggrieved against the said judgment and decree, applicant-petitioner preferred an appeal before the Additional District Judge, SAS Nagar, Mohali accompanied by an application under Section 5 of Limitation Act, 1963 (for short 'Act') for condonation of delay of 708 days. However, the said application moved under Section 5 of the Act was dismissed vide order dated 25.01.2017 passed by Additional District Judge, SAS Nagar, Mohali. Applicant-petitioner preferred the Civil Revision No.2645 of 2017 challenging the aforesaid order dated 25.01.2017 but that revision petition stood dismissed by this Court vide order/judgment

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

dated 20.04.2017, of which the review has been sought through instant application.

3. Dis-satisfied with the order/judgment dated 20.04.2017 passed by this Court, the applicant preferred Special Leave Petition vide Diary No.28825 of 2017 and was disposed of vide order dated 03.10.2017. For ready reference, the order dated 03.10.2017 is reproduced which reads ut infra:-

“Upon hearing the counsel the Court made the following order

Delay condoned.

It is submitted by the learned counsel appearing for the petitioner that certain aspects of the matter relating to the question as to why the petitioner's Power of Attorney did not offer himself for cross examination which was not noticed by the High Court. However, it will be open for the petitioner to file a Review Petition before the High Court.

The special leave petitions are disposed of with the above observations.”

4. In pursuance of the aforesaid order dated 03.10.2017 passed by the Hon'ble Apex Court, applicant-petitioner preferred instant review application. In response to notice of review application, respondent has also filed short reply whereby submitting that the applicant-petitioner has not approached this Court with clean hands and has concealed the material facts; that the order dated 20.04.2017 passed by this Court is well reasoned and calls for no interference and that ground on which the review has been

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

sought has already been taken care of and discussed by this Court while passing the order dated 20.04.2017.

5. The contention of the reivew applicant is that the factum of non-cross examination of AW1-Jaspreet Singh, GPA holder and reasons for his non-cross examination could not be highlighted during the course of arguments. The same also did not come to the notice of this Court, which has resulted into miscarriage of justice. In fact, it was the learned counsel for the respondent who did not cross examine the applicant-petitioner despite the fact that he submitted himself for the purposes of cross-examination number of times. Rather, learned counsel appearing on behalf of the respondent before the Lower Appellate Court pleaded no instructions on behalf of the respondent and the Court had to issue notice to the respondent(s) for securing their presence. It was only due to the said reason, AW1-Jaspreet Singh could not be cross examined and the evidence was closed. Thus, applicant-petitioner cannot be made to suffer for lapse and omission attributable to the respondents or their counsel.

6. On the other hand, learned counsel for the respondent has submitted that applicant-petitioner has twisted the actual facts. As per his version while addressing the arguments in fact AW1-Jaspreet Singh appeared in the witness box and tendered his affidavit. However, on the day, he was to be cross-examined, matter was adjourned. Thereafter, he did not present himself for the purposes of his cross-examination. This fact is clear from the interim order dated 30.03.2016. Subsequent thereto, some documents were tendered by the learned counsel appearing on behalf of applicant-petitioner before the Lower Appellate Court and closed the

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

evidence on 12.04.2016. So the order dated 20.04.2017 passed by this Court as well as order dated 25.01.2017 passed by the Lower Appellate Court does not call for any interference. Accordingly, learned counsel for respondent prayed for dismissal of review application.

7. This Court has given a thoughtful consideration to the aforesaid rival submissions made by learned counsel for the parties and have meant meticulously scanned the pleadings and various documents available on file and comes to the conclusion that order dated 20.04.2017 passed by this Court deserves to be reviewed/modified in the light of discussion hereinafter.

8. The facts are undisputed which have been referred to above and the only question which requires to be scrutinised is as to what was the reason for non-cross examination of AW1-Jaspreet Singh who appeared as GPA of the petitioner-Mohinder Kumar.

9. It would be appropriate to reproduce the interim order dated 30.03.2016 which is in respect of the part examination of AW1-Jaspreet Singh it reads as under:-

“One AW examined partly. His cross examination could not be conducted because copy of affidavit tendered into evidence has not been supplied to the counsel for respondent and as requested by learned counsel for respondent present AW is bound down for 12.04.2016 for his cross examination.”

10. A glance at the aforesaid interim order dated 30.03.2016 transpires that Jaspreet Singh GPA holder of the applicant-petitioner

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

presented himself in the Court as AW1 on 30.03.2016. But since the copy of his affidavit which was to be read in evidence as his examination-in-chief was not supplied earlier, the matter was adjourned for 12.04.2016.

11. However, on the next date i.e. 12.04.2016, evidence on behalf of the applicant-petitioner was closed after tendering certain documents. It appears that evidence was closed without getting conducted the cross-examination of AW1-Jaspreet Singh. Thus, there was lapse or omission on the part of the Court also as nothing specific was incorroborated in the orders as to why the cross examination was not conducted. There may be some inadvertence on the part of the counsel appearing for the applicant-petitioner also who closed the evidence after tendering certain documents but without cross examination of AW1-Jaspreet Singh.

12. It is well settled proposition of law that a party cannot be made to suffer for lapse, omission or inadvertence on the part of either court or the counsel. Moreover, subsequent thereto, learned counsel for the respondent also pleaded no instructions and ultimately an application under Section 5 of the Act was dismissed vide order dated 25.01.2017 passed by the Lower Appellate Court. Since the detailed facts and reasons for non-cross examination of AW1-Jaspreet Singh were not highlighted during the course of arguments and/or did not come to the notice of this Court, order dated 20.04.2017 was passed whereby Civil Revision was dismissed. Thus, the reason(s) for non-cross-examination cannot be attributed to Jaspreet Singh.

13. Otherwise also, it is well settled proposition of law that Courts are required to decide the cases, on merits. It is cardinal principles of law that if procedural wrangles and substantial justice are pitted against each

**CM No.23596-CII of 2017 in
RA-CR No.191-CII of 2017 in
Civil Revision No.2645 of 2017 (O&M)**

other, the latter is to prevail over the former.

14. Thus, this Court is of the considered view that it would be just proper and expedient as well as to impart justice to the parties, the matter should be re-visited by the lower appellate court with regard to condonation of delay, that too, after affording an opportunity to the applicant-petitioner to present himself for the purposes of cross-examination by the respondents as well as to lead other evidence, if any.

15. Accordingly, instant review application is allowed and order dated 20.04.2017 passed by this Court in Civil Revision No.2645 of 2017 captioned as ***Mohinder Kumar vs. Gurnam Singh***, stands reviewed/modified to the extent that lower appellate court shall provide an opportunity to the parties to lead evidence in support of respective claims/pleadings including presentation of AW1-Jaspreet Singh for the purposes of cross examination, if any and then to decide the application afresh keeping in view the evidence as well as legal proposition applicable to the facts and circumstances of the matter in issue. Parties through their counsel are directed to appear before the lower appellate court on 25.09.2018.

16. Copy of this order be sent to the concerned court for compliance.

September 04, 2018

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes
Yes/No**