

CR-1127-2016 (O&M)

201

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

CR-1127-2016 (O&M)

Date of decision : 15.01.2019

Bhai Nand Lal Khalsa Public School and another

... Petitioners

Versus

Harender Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Ranghi, Advocate
for the petitioners.

Mr. M.K. Bhatnagar, Advocate for
Mr. V.K. Sharma, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 13.08.2015 (Annexure P-3), whereby the application seeking condonation of delay in filing the appeal against the judgment and decree dated 03.12.2010, passed against the petitioners-defendants, has been dismissed being barred by one year.

The petitioners-defendants could not file the appeal within time frame owing to the reasons given in the application that when they received the summons of the execution application, submitted an application for taking certified copy as the counsel did not give opinion to file the appeal. The application was returned with the report that the file was summoned by the Civil Judge and another application was filed on 19.01.2012 and

CR-1127-2016 (O&M)

certified copy was supplied on 31.01.2012. Thereafter, the appeal was filed and in this process, the delay has occurred. There are notable and arguable points, in case, the appeal is heard on merits, thus, urges this Court for setting aside the impugned order, under challenge.

Per contra, learned counsel for the respondent-plaintiff submitted that the impugned order, under challenge, is perfectly legal and justified as the application is bereft of the reasons of reasonable cause and delay. Such an approach by the litigant cannot be said to be *bona fide* or unintentional, but smacks of *mala fide*, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Rangi, as the facts, indicated above, leaves no manner of doubt that approach of the petitioners-defendants in laying challenge to the judgment and decree dated 03.12.2010 had been lackadaisical and tardy. The right of statutory appeal by adopting mere technicality cannot be taken away, the Court below ought to have imposed certain onerous conditions upon the petitioners-defendant, instead laid focus on the decision of the appeal. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned order, under challenge, subject to the payment of costs of ₹50,000/-, which shall be condition precedent.

The parties or through their counsel are directed to appear before the lower Appellate Court on 06.02.2019.

It is expected that the lower Appellate Court shall decide the

CR-1127-2016 (O&M)

3

appeal within a period of ten months from the date of receipt of the certified copy of this order.

The present revision petition stands disposed of.

15.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**