

CR-2490-2016 (O&M)

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

CR-2490-2016 (O&M)

Date of Decision: March 28, 2019

Shiv Shanker Lohia

Petitioner

Versus

Mohinder Kumar and another

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Raman Gaur, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The petitioner herein seeks to challenge the order of the Rent Controller dated 14.09.2011 and that of the Appellate Authority dated 06.12.2015 dismissing his application filed under the East Punjab Urban Rent Restriction Act seeking eviction on the ground of arrears of rent.

An eviction suit came to be filed in 2011 submitting that the tenant was in arrears of rent and house tax which came to be contested by the respondent-tenant. On the pleadings of the parties issues were framed and evidence led and thereafter on consideration of the same, the application was dismissed on the ground that the respondents had duly paid the arrears of rent alongwith interest i.e. @6% per annum and, therefore, would not be liable to be ejected from the demised premises.

Aggrieved against the said order, the petitioner herein preferred an appeal along with an application under Section 5 of the Limitation Act

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seeking condonation of delay in filing of the said appeal. The application under Section 5 was also dismissed by the impugned order dated 08.12.2015.

Learned counsel for the petitioner would contend that the delay in filing the appeal was not intentional and the delay of 19 days ought to have been condoned.

I have heard learned counsel for the petitioner and have also perused the impugned order. The Appellate Authority considered the application for condonation of delay alongwith the averments that had been made thereunder. In the said application, certain grounds had been taken as to why the appeal was delayed which were considered by the Appellate Authority holding that there were certain scandalistic allegations raised by the applicant-the petitioner herein in the pleadings even against the Presiding Officer who had passed the impugned order. Further while dismissing the appeal, it was also noticed that there was no documentary evidence adduced to substantiate the pleas taken as to why there was a delay in filing the same. The said order has been challenged in the High Court and Learned counsel appearing on behalf of the petitioner has placed on record a certified copy of the application dated 19.12.2011 that had been filed. In support of the application seeking permission to place on record the application for condonation of delay, it has clearly been stated in para3 :

“ That the filed application for condonation of delay before the Ld. Appellate Authority Faridkot is not signed by the applicant-petitioner. The overwriting in the application for condonation of delay after typing as enquired by the applicant-petitioner

has been made by the counsel defending the case before the Ld. Court below. Hence this application.”

It has been mentioned that the said application is not signed by the applicant-petitioner. The over-writing in the said application has been made by the counsel defending the case before the trial Court. The application along with the affidavit is taken on record.

The arguments as raised by learned counsel for the petitioner that the application filed under Section 5 of the Limitation Act ought to have been considered in its true perspective and the delay condoned would not be of any substance considering the fact that an affidavit is available on the record of this Court in support of CM-23690-CII-2016 stating that the application filed is not signed by the applicant-petitioner.

In such a situation, if the application itself has not been signed by the petitioner, it would mean that no application under Section 5 of the Limitation Act has been preferred by the petitioner and in such an eventuality, the appeal could not have been entertained without condoning the delay.

It is taken that there is no application for condonation of delay and, therefore, the appeal was rightly dismissed. No interference is called for.

Accordingly, the revision petition stands dismissed.

March 28 , 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No