

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

C.R. No.3110 of 2016

Date of Decision.10.01.2019

Usha Arora

...Petitioner

Vs

Chameli Devi and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gagan Oberoi, Advocate
for the petitioner.

Mr. N.K. Vadehra, Advocate
for respondent No.1.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order (Annexure P-1) whereby appeal preferred against order dated 31.05.2013 accompanied by application under Section 5 of the Limitation Act without considering it on merits, as application for condonation of delay has been dismissed.

Learned counsel appearing on behalf of the petitioner submitted that one Chameli Devi had filed a petition under 372 of the Indian Succession Act and vide order dated 31.05.2013, the same was allowed by the District Judge. Due to inadvertence, a FAO was filed wherein certain objections were taken and the same returned. On enquiry from the counsel, the petitioner came to know that the FAO filed before this Court was returned by the registry as the same was not maintainable and advised to file an appeal before the District Court. Without any further delay, the appeal was filed in September, 2014, therefore, the delay was neither intentional nor willful but owing to the legal advice. The Court below has erroneously dismissed the application. In support of aforementioned contention, relied upon the judgment of Hon'ble Supreme

Court rendered in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649.*

Per contra, Mr. Vadehra, learned counsel appearing on behalf of respondent No.1 opposed the revision petition on the premise that even if the appeal was filed after return of the FAO, no explanation has come forth for delay and application was deprived of expression 'reasonable cause and due diligence', thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit. The explanation given has not been disputed. If there was delay in filing, a person cannot be thrown out without availment of statutory remedy against the order dated 31.05.2013. The Court below could have noticed the aforementioned fact and laid focus on the merits of the case instead of dismissing the application.

No doubt the petitioner had been lackadaisical but for the reasons aforementioned and to prevent the miscarriage of justice, the impugned order is set aside, subject to payment of costs of ₹10,000/- which shall be condition precedent. In case, the costs is not deposited as directed, the impugned order shall be restored. The application is allowed and the Court below is directed to hear and decide the appeal on merits.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

January 10, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No