

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

**CR No. 3733 of 2018 (O&M)
Date of Decision:-11.12.2019**

Amit Jain

...Petitioner

Versus

Gurpreet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

Mr. Amarjit Markan, Advocate,
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

This revision petition has been preferred against the order dated 21.02.2018 passed by the Additional District Judge, Patiala, whereby the application under Section 5 of the Limitation Act filed along with the main appeal seeking condonation of delay of 99 days in filing the appeal was dismissed.

As a consequence of dismissal of the application under Order 41 Rule 3-A read with Section 5 CPC of the Limitation Act, the main appeal was also dismissed.

Perusal of the record would show that the suit of the plaintiff-petitioner was decreed by the Trial Court vide judgment and decree dated 30.03.2017 for specific performance.

Owing to some intervening circumstances in which the petitioner had purchased the adjoining land, he sought to convert the main decree in an alternative decreed by the Trial Court.

Owing to the circumstances at his command, the plaintiff sought review of the decree dated 30.03.2017 by way of moving an application under Order 47 Rule 1 CPC. The said application was dismissed by the Trial Court. In filing appeal, delay of 99 days has occurred before the Lower Appellate Court. Lower Appellate Court has dismissed the application as well as appeal vide the impugned order. Perusal of the record would show that no third party interest has crept in so far.

In view of the observations made by the Hon'ble Apex Court in **Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107**, there cannot be any uniform jacket to assess bona fide of the person in explaining each and every hours/minutes/seconds of delay. The merits of the case cannot be sacrificed at the threshold of technicalities. Once the technicality is treated against substantial cause of justice, then cause of justice should prevail.

In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399**

and State of Rajasthan and another Vs. Bal Kishan Mathur (D) through LRS and others, 2013(4) CivCC 805, delay in filing the appeal can be condoned as the meritorious matters cannot be thrown at the verge of technicalities.

In Lanka Venkateshwaru (Dead) by LRs Vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363, the Hon'ble Apex Court has even condoned the delay of 3703 days in the context of default in bringing legal representatives of concerned party on record. It was held that the delay had occasioned due to insufficiency, inaptitude and negligence of Government Pleader.

In the instant case, by condoning the delay of 99 days the Lower Appellate Court would be in a position to hear the lis on merits for which the petitioner can be burdened with adequate costs.

For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 21.02.2018 passed by the Additional District Judge, Patiala and delay of 99 days in filing the first appeal before the Lower Appellate Court, is condoned. This appeal is restored to its original number before the Lower Appellate Court. The Lower Appellate Court shall proceed to hear the appeal on merits, however, subject to payment of costs of Rs.15,000/- to be paid to the respondent.

Payment of costs shall be the condition precedent for granting

indulgence by the Lower Appellate Court in the aforesaid context.

11.12.2019

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**(Raj Mohan Singh)
Judge**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No