

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

C.R. No. 4230 of 2017
Date of Decision: May 07, 2019

Surinder Kumar Walia

... Petitioner

Versus

Baldev Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Aman Rani, Advocate,
for Mr. Aditya Pal Singla, Advocate,
for the petitioner.

None for the respondent.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned order dated 28.03.2017 (Annexure P/1) whereby application filed by the petitioner under Section 5 of the Limitation Act for condonation of delay in filing the appeal preferred against the judgment and decree dated 18.09.2012 in Civil Suit No. 1725 of 2007, has been dismissed.

Ms. Aman Rani, learned counsel, appearing on behalf of the petitioner, submitted that respondent-plaintiff instituted a suit for recovery of Rs. 1,75,620/- in which the petitioner-defendant was proceeded *ex parte*, resulting into an *ex parte* judgment and decree dated 18.09.2012. Thereafter, an application under Order 9 Rule 13 C.P.C. was filed on 22.10.2012 (Annexure P/3). The counsel withdrew the afore-mentioned application on 22.05.2014. In this process, delay has been occurred which was not intentional or deliberate.

In pursuance of notice of motion order, Mr. Kashmir Singh, Advocate had put in appearance on behalf of the respondent on 11.10.2017.

Thereafter, none had appeared on behalf of the respondent i.e. on

15.12.2018 and 08.03.2019. Even today, there is no representation on behalf of the respondent. Accordingly, I proceed to decide the present revision petition.

I have heard learned counsel for the petitioner and appraised the paper-book.

The facts noticed above are not in dispute. In such circumstances, I am of the view that the period spent by the petitioner in filing the appeal could have been condoned from the date of filing of application instead of strictly complying the provisions of the Limitation Act. The *ex parte* judgment and decree is 18.09.2012 and the petitioner on acquiring the knowledge in this regard on 07.10.2012, filed the application under Order 9 Rule 13 CPC on 22.10.2012 which was withdrawn on 22.05.2014, whereas appeal was filed on 10.07.2014. The technicalities should not come in the way of the parties for adjudication of the appeal on merits. However, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the impugned order, under challenge and condone the delay in filing the appeal. Accordingly, the application for condonation of delay in filing the appeal is allowed. The appeal is ordered to be restored to its original number and to be decided on merits.

Resultantly, the present revision petition stands allowed. Parties are directed to appear before the Appellate Court on 28.05.2019.

May 07, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes
Whether reportable : No