

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

**CR No.4640 of 2018(O&M)
Date of Decision: 02.05.2019**

Rajender Singh and others

.....Petitioners

Versus

**Municipal Committee Ganaur through its Secretary and
another**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Anand Singh, Advocate
for the petitioners.

Mr. S.K. Mahajan, Advocate
for respondent No.1.

Mr. R.T. Redhu, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have preferred this revision petition against the order dated 21.03.2018 passed by District Judge, Sonapat vide which application under Section 5 of the Limitation Act filed along with appeal was dismissed and as a consequence of dismissal of the application, the appeal was also dismissed.

[2]. Plaintiffs/petitioners filed a suit for mandatory injunction with consequential relief of permanent injunction. Satish was

plaintiff No.2 who died on 03.02.2016 during pendency of the suit before the trial Court. LRs of Satish were not brought on record. Since common Advocate was appearing on behalf of the plaintiffs, therefore, suit was dismissed on 17.03.2017 without impleading legal representatives of deceased Satish.

[3]. An appeal was preferred before the Lower Appellate Court along with application under Section 5 of the Limitation Act, seeking to condone the delay of 106 days in filing the appeal. Reason for delay was pleaded to be the death of Karta i.e. Satish as he was managing the affairs of the family. After the death of Karta Satish, the entire family remained disturbed and could not approach the counsel for filing the appeal.

[4]. Lower Appellate Court considered the delay to be sufficient to dismiss the application on the ground that it was not properly explained and the same was not *bona fide*.

[5]. I have considered the arguments made by learned counsel for the parties.

[6]. Evidently, the suit was filed by four persons namely Rajinder Singh, Satish, Parminder and Asha Ram. Satish was managing the affairs of the family and he died on 03.02.2016. Since common Advocate was representing the cause of the plaintiffs, therefore, the counsel kept on appearing in the suit even without impleading legal representatives of deceased

Satish. Since Satish was Karta of the family, therefore, the legal representatives in the absence of their impleadment on record could not contact the counsel for filing the appeal before the Lower Appellate Court against the judgment and decree dated 17.03.2017. Delay of 106 days in filing the appeal has occasioned in filing first appeal before the Lower Appellate Court.

[7]. Evidently, no third party interest has been created during pendency of the appeal. Learned counsel for the petitioners contended that in view of observations made 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**, meritorious matters cannot be thrown at the verge of technicalities. Learned counsel also referred to **Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107** and contended that if the merit of the case is pitted against technicality, the cause of merit should prevail. Delay of 106 days in filing the first appeal before the Lower Appellate Court is not such which may deprive the petitioners from exercise of discretion in their favour for condonation of delay. At the most, the cause espoused by the petitioners in appeal can be decided on merits.

[8]. In view of facts and circumstances of the case, I deem it appropriate to condone the delay of 106 days in filing the first appeal before the Lower Appellate Court. This revision petition is accordingly allowed, however subject to payment of costs of Rs.15,000/- to be deposited in District Legal Services Authority, Sonipat. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court in favour of the petitioners. Lower Appellate Court shall make every endeavour to decide the appeal at the earliest in accordance with law.

[9]. Both the parties are directed to appear through their counsel before the Lower Appellate Court on 24.05.2019.

02.05.2019

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**