

In the High Court of Punjab and Haryana at Chandigarh

207

CR No. 5180 of 2015 (O&M)

Date of decision: 27.3.2019

Vivek Kumar through LRs Priksha Rani and anr

.....petitioners

Versus

Raj Kumar and ors

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.S.S.Tiwana, Advocate
for the petitioners.

Mr. Sanjay Tangri, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(oral)

Petitioners have preferred this revision petition against the order dated 12.9.2014 passed by the Additional District Judge, Jalandhar, whereby the application, under Section 5 of the Limitation Act filed along with the appeal, was dismissed and as a consequence thereof, the appeal was also dismissed.

Plaintiffs-petitioners filed a suit for possession before the trial Court. As per para No.5 of the judgment and decree dated 19.9.2012, it was recorded by the trial Court that Sandeep Kumar himself stepped into witness box as PW-1 and thereafter, counsel for the plaintiff closed his evidence. The record of the case would show that the plaintiffs filed the suit in person and

they were contesting the suit in person. No advocate was engaged at any point of time. It appears that some misconception of fact has come on record. The fact remains that the suit filed by the plaintiffs was dismissed vide judgment and decree dated 19.9.2012.

According to learned counsel for the petitioners, the judgment and decree dated 19.9.2012 passed by the trial Court never came to the knowledge of the petitioners and the appeal preferred by them against the aforesaid judgment and decree was barred by 9 ½ months. The appeal was filed on 11.7.2013 challenging the judgment and decree dated 19.9.2012 passed by the trial Court.

In view of observations made by the Hon'ble Apex Court 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.

At this stage, the Court is not to see the ultimate merits of the case, which is subject matter of pending appeal before the lower Appellate Court.

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 Collector, Land Acquisition Anantnag Vs. Mst. Katiji, (1987) 2 SCC 107, the Hon'ble Apex Court has also observed that there cannot be any uniform jacket to assess bona fide of the person in explaining each and every hours/minutes and seconds of delay. The merits of the case cannot be sacrificed at the threshold of technicalities. No third party interest has crept in.

For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 9 ½ months in filing the first appeal before the Lower Appellate Court.

This revision petition is accordingly allowed. Normal consequences to follow.

March 27, 2019
anita

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking
Whether reportable

Yes/No
Yes/No