

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

**CR No.6260 of 2018(O&M)
Date of Decision: 01.04.2019**

Dalbir Singh	Petitioner
Versus	
Boota Singh and others	Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. G.S. Sidhu, Advocate
for the petitioner.

Mr. Mohd. Yousaf, Advocate
for respondent No.1.

Ms. Surinder Kaur, Advocate
for respondents No.2, 3 and 4.

Ms. Amandeep Kaur, Advocate
for respondents No.5 to 7.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this revision petition against the order dated 16.05.2018 passed by Additional District Judge (NRI Court), Jalandhar vide which the application under Section 5 of the Limitation Act filed along with main appeal was dismissed and as a consequence of the same, the appeal was also dismissed by the Lower Appellate Court.

[2]. There was a delay of 70 days in filing the appeal. Learned counsel for the petitioner submitted that earlier

litigation was being pursued by son of the petitioner who went to Dubai and thereafter, came to India. The delay has occasioned owing to the conduct of the son of the petitioner.

[3]. Learned counsel for respondent No.1 by referring to para Nos.6 and 7 of the order dated 16.02.2016 passed by Civil Judge (Junior Division), Jalandhar stated that there was no objection filed by the petitioner against the suggested mode of partition. No objection was filed against the preliminary decree and even no objection was filed against the final decree.

[4]. Against this, learned counsel for the petitioner stated that in view of statement made by Boota Singh, father of the petitioner has purchased one kanal of land and thereafter, he had constructed 10 rooms over the 10 marlas of land and boundary wall was constructed on the remaining land. He had also installed a gate over the suit property. The witness pleaded ignorance in respect of purchase of property by Ajit Singh, though he stated that he himself has purchased the property 20 years ago.

[5]. At this stage, this Court is not in a position to decide the *lis* on merits which was subject matter of first appeal before the Lower Appellate Court. Since the appeal has been dismissed primarily on the ground of limitation, therefore, I deem it appropriate to decide this revision petition only in the context of

delay in filing the appeal before the Lower Appellate Court.

[6]. According to the petitioner, delay has occasioned due to conduct of son of the petitioner while going abroad and then coming back to India. Knowledge may have given cause of action for filing the appeal by the petitioner in time. Though the appeal has not been filed within limitation, however the same was filed along with application under Section 5 of the Limitation Act seeking to condone the delay of 70 days in filing the appeal. There cannot be any straight jacket formula to assess the *bona fide* in moving the application.

[7]. 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**, it was held that meritorious matters cannot be thrown at the verge of technicalities. 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. The delay is not such which will deprive the petitioner from exercise of discretion in his favour by way of condoning the delay by the

Lower Appellate Court. No third party interest has crept in. For the delay in question, the opposite party can best be compensated with adequate costs.

[8]. 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.

[9]. For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 70 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.10,000/- to be paid to the respondents in equal proportion. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court in the aforesaid context. Lower Appellate Court shall make every endeavour to decide the appeal at the earliest.

01.04.2019

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No