

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

RSA No.1399 of 2019 (O&M)

Date of Decision: November 15, 2019

Rajpal

...Appellant

Versus

Vinod Kumar

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the appellant.

Mr. Divay Sarup, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

This is a regular second appeal that has been filed seeking to challenge the judgment and decree dated 23.05.2014 passed by the lower court whereby, the suit filed by the respondent-plaintiff has been partly decreed to the effect that he is entitled to refund of his earnest money of ₹ 1,90,000/- along with interest @ 8.5% per annum as well as judgment and decree dated 28.08.2017 passed by the first Appellate Court whereby, the appeal filed by the appellant-defendant was also dismissed.

By an order dated 13.03.2019, notice of the application seeking condonation of delay of 433 days in filing the appeal was issued, pursuant to which appearance has been caused on behalf of the respondent and reply to the said application has also been filed.

During the pendency of the said delay application, counsel for the appellant had submitted that on account of paucity of funds, the appellant was unable to make the payment in one go, however, he submitted that son of the appellant would clear the entire payment in two installments, the first half would be paid on 11.07.2019 before the executing court and the balance amount would be paid within a period of two months thereafter and prayed for stay of his arrest. Counsel for the respondent had agreed to receive the payment in two installments.

In view of the aforesaid statements made, this court had stayed the order dated 06.04.2019 passed by the Civil Judge (Junior Division) with a direction that the appellant would deposit the total amount by 10.09.2019, with a further stipulation that in case, there is non-compliance of the order to deposit of the first installment, any interim protection for stay would stand automatically vacated. The matter was adjourned to 20.09.2019, on which date, the matter could not be taken up and it was adjourned to 18.10.2019. On the said adjourned date, counsel for the appellant submitted that the salary of the appellant had been attached and prayed for stay of the said order, which stay was opposed by counsel for the respondent on the ground that he had been agitating for the refund of the earnest money since 2007 and had not received the amount under the decree. This court had adjourned the matter for today viz. 15.11.2019 giving last opportunity to the appellant to bring the entire amount by way of demand draft in the court.

This matter has been called twice today. Neither the counsel for the appellant turned up nor sought any adjournment nor informed the court regarding the payment. Consequently, finding no ground to extend

the interim stay order dated 29.05.2019 whereby order dated 06.04.2019 passed by the Civil Judge (Junior Division) had been stayed, the interim stay stands vacated.

The regular second appeal has been filed along with an application seeking condonation of delay of 433 days in filing the appeal, reply to which has already been filed.

In the said application seeking condonation of delay, it is stated that after the passing of the judgment and decree dated 28.08.2017, the appellant had approached his counsel at the trial court for filing the appeal in the High Court, which according to him was filed. It is only when the appellant received summons of the execution petition that he came to know that the appeal had not been filed. Consequently, he collected the documents from his counsel and approached another counsel for filing the appeal and that is the reason for delay of 433 days in filing the appeal, which is neither intentional nor mala fide.

In the reply filed to the said application, an objection has been taken that the application is vague as the appellant has neither mentioned in his application as to when he applied for certified copy of the judgment and decree of the first Appellate Court and on which date, he handed over the documents for filing appeal to the counsel. It is also stated in the reply that even the name of the counsel has not been mentioned in the application.

I have heard counsel for the respondent and with his assistance have gone through the pleadings of the application filed under Section 5 of the Limitation Act and the reply filed thereto.

It is settled principle that under Section 5 of the Limitation Act,

length of delay is no matter, acceptability of the explanation is the only criteria. Rules of limitation are not meant to destroy the right of the parties. The condonation of delay is a matter of discretion of the court. A reading of the said application shows that the same is vague, without any details that as to when the appellant applied for certified copy of the judgment and decree passed by the first Appellate Court and even the name of the counsel to whom he handed the documents to file regular second appeal in the High Court has not been mentioned. The application is also vague for the reason that in the application it has not been mentioned that as to when the appellant received summons in the execution petition. Only bald and vague averments have been made in the application, without any details, which cannot be accepted as gospel truth. This court is of the considered opinion that, under these circumstances, no sufficient cause is made out to condone the delay.

In view of the above discussion, the application filed under Section 5 of the Limitation Act seeking condonation of delay of 433 days in filing the appeal is dismissed. Consequently, the appeal stands also dismissed.

November 15, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No