

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

**RSA No.3223 of 2016 (O&M)
Date of Decision.04.04.2019**

M/s Sogarwal Services Pvt. Ltd.

...Appellant

Vs

M/s Satyug Darshan Trust and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court whereby the appeal preferred against the decree of the trial court dismissing the suit seeking relief of mandatory injunction has been dismissed on the ground of delay of 63 days. It has been contended that plaintiff was granted a contract by defendants and plaintiffs had kept machinery at the spot for execution of the work, much less, the raw material consisting of stone boulders. Since the contract had already been granted to the private respondents, the suit was dismissed.

The trial Court, according to argument of Mr. Aditya Jain, did not appreciate the fact that certain evidence had come on record regarding the aforementioned machinery and the articles but despite that mandatory injunction was declined. The appeal was belatedly filed by 63 days and there is no adjudication on merits. It is further contended that delay had occurred as entire focus of the appellant-plaintiff was on lifting of goods despite hindrance.

I am of the view that lower Appellate Court ought to have condoned delay, particularly when relief of mandatory injunction was there, for, primary relief as per the provisions of 41(h) of the Specific Relief Act was maintainable. Though it is a fit case for issuing notice but since delay is not much and in order to defray cost of litigation, I deem it appropriate to set aside the judgment and decree of the lower Appellate Court dismissing the appeal on the ground of limitation, subject to costs of ₹10,000/-, which would be an offset of the legal expenditure deemed to have incurred in case other party had been called.

In view of such circumstances, the judgment and decree of the lower Appellate Court is set aside and the appeal is restored to its original number, subject to payment of costs of Rs.10,000/- which shall be condition precedent.

The appeal stands disposed of in above terms.

The lower Appellate Court shall secure presence of other party by issuing notice.

(AMIT RAWAL)
JUDGE

April 04, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No