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

**Civil Revision No.6330 of 2018 (O&M)
Date of Decision: 30.10.2019**

HARBANS SINGH

.....Petitioner

Vs

KULDEEP KAUR

....Respondent

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

Present: Mr. Ramneek Vasudeva, Advocate
for the petitioner.

Mr. Naveen Sharma, Advocate and
Mr. Vijay Lath, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 16.04.2018 passed by the Addl. District Judge, Rupnagar, vide which the application for condonation of delay of 15 days in filing the first appeal before the lower Appellate Court was dismissed and as a consequence of that the appeal was also dismissed.

[2]. The appeal was filed by the petitioner against the judgment and decree dated 16.11.2016 passed by the Civil Judge (Junior Division) Rupnagar, whereby the suit of the plaintiff/respondent was decreed with costs.

[3]. Perusal of the impugned order would show that the petitioner was directed to lead evidence on the application for condonation of delay and thereafter was granted last opportunity to lead evidence. On 26.03.2018, learned counsel for the petitioner made a statement that he will conclude the entire evidence on the next date of hearing, failing which the evidence be closed by order. Since no evidence was led, therefore, in view of statement made by learned counsel for the petitioner, the evidence was closed and consequently the application for condonation of delay was also dismissed.

[4]. *De hors* the findings recorded by the lower Appellate Court, this Court takes judicial notice of the fact that there was delay of 15 days in filing the first appeal before the lower Appellate Court.

[5]. In view of **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**, the delay can be condoned as the meritorious matters cannot be thrown at the verge of technicalities. Even in appropriate cases arising out of monetary considerations, the interest part can be warded off for the period vide which the

delay had occurred in filing the appeal.

[6]. Similar proposition arise in **Lanka Venkateshwaru (Dead) by LRs vs. State of Andhra Pradesh and others, (2011) 4 Supreme Court Cases 363**, wherein 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.

[7]. 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 by this Court in his favour. No third party interest has crept in. The delay can be condoned subject to payment of adequate costs by the petitioner in terms of Section 35-B CPC.

[8]. For the reasons recorded hereinabove, I deem it appropriate to condone the delay of 15 days in filing the first appeal before the Lower Appellate Court. This revision petition is accordingly accepted, however, subject to payment of costs of

Rs.15,000/- to be paid by the petitioner to the respondent.

[9]. Payment of costs shall be the condition precedent for granting indulgence by the Lower Appellate Court in fixing further date of hearing of the appeal on merits.

October 30, 2019

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No