

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 13.02.2020****CR No.8289 of 2018 (O&M)**

Sarjeet (deceased) through his LRs

...Petitioner

Vs.

Neelam & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA*******

Present: Mr. G.C.Shahpuri, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. In the application under section 5 of the Limitation Act, 1963 praying for condoning delay of more than 9 months in presenting the first appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree of the trial court allowing the suit, the following reasons were furnished to explain the delay by sufficient cause which prevented the filing of the appeal within the prescribed period of limitation.

The contents of the application/affidavit read as follows:

- “1. That the applicant / appellant has filed the above noted civil appeal before this Hon’ble Court today. The contents of the same may kindly be read as part and parcel of this application to avoid the repetition of facts and for the sake of brevity.
2. That applicant / appellant was in shock and trauma of judgment passed by ld. Lower Court against him due to which the applicant / appellant was not in his sound state of mind and remained under treatment for the same for a long period in the mean while the applicant

/ appellant could not contacted his counsel due to which the stipulated time period for filing instant appeal was expired.

3. That there is no malafide on the part of applicant / appellant and the delay in filing the present civil appeal is not intentional but bonafide due to the fact mentioned above.
4. That no prejudice will be caused to respondent/defendant in the event the Hon'ble Court may allow the present application."

2. The reason assigned for the belated approach lacks even the basic ingredients of section 5 of the Limitation Act, 1963 to qualify as legally acceptable explanation of sufficient cause for the delay. If the appellant was under "shock and trauma" caused by the judgment of the trial Court which threw him in a state of unsound mind which required treatment, no material particulars of medical evidence has been furnished to establish the causal connection between the dismissal of the suit and the delay in presenting the appeal.

3. It is indeed shocking to hear from a losing party on affidavit that a judgment shocked him and it was such a shock that left him utterly confounded.

4. I would, therefore, find no intelligible reason in the application to upset the perfectly proper order of the learned Additional District Judge, Gurugram in rejecting the application for condoning the delay in filing the appeal and resultantly the appeal itself. The learned Judge has relied on precedents in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others, (2013) 12 SCC 649 and N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123 to conclude that the application deserves

dismissal, which makes the appeal time barred. The explanation given is neither genuine nor bona fide.

5. Accordingly, this revision petition is dismissed.

13.02.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>