

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

CR No.1033 of 2020 (O&M)
Date of Decision:12.2.2020

Jatinder Kaur

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr.Shvetanshu Goel, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

Practice and procedure is that an appellate court should desist from staying a decree in the face of a pending application for condoning the delay in filing the appeal. In this case, the application under Order 41 Rule 5 of the CPC is pending before the appellate court and stay has been granted against the decree involving monetary benefits. Accordingly, this is such a basic principle that hearing to the opposite side is not required as the State would be heard on its application under Section 5 of the Limitation Act, 1963 to successively plead for condonation of delay of 324 days in presenting the appeal.

Accordingly, this petition is allowed. The impugned order dated 26.9.2019 granting stay by the first appellate court is set aside. The matter is remitted to the first appellate court to consider the application under Section 5 of the Limitation Act and dispose of the same. While considering the application for condonation of delay, the first appellate court will pay due

regard to the case law of this court and the Supreme Court including the

CR No.1033 of 2020 (O&M)

:2:

judgment rendered by me in FAO No.665 of 2020 (HDFC Ergo General Insurance Co. Ltd. vs. Ramesh Devi and others decided on 9.1.2020).

12.2.2020
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No