

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

Sr. No.114

**CM Nos.1172 to 1174-C-2021 in/and
RSA No.160 of 2021
DATE OF DECISION: March 22, 2021**

VIJAY KUMAR AND OTHERS

..APPELLANTS

VERSUS

DUNI CHAND

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Aakash Singla, Advocate, for the appellants.

SUDHIR MITTAL, J. (ORAL)

CM-1172-C-2021

This application has been filed for condoning the delay of 995 days in filing the Regular Second Appeal.

According to the application, certified copy of the judgment and decree of the learned Lower Appellate Court was prepared on 19.03.2018 but the same was misplaced and again fresh copy was applied on 13.02.2019 which was prepared on 16.02.2019. Further, it has been mentioned that legal advise obtained by the applicant was not in favour of filing of Regular Second Appeal as appeal against judgment of conviction passed by the Criminal Court was pending. Still further, the non-applicant-respondent filed an application on 16.05.2018 for correction of errors in the decree and the said application remained pending upto 05.02.2021. Meanwhile, execution was filed by the non-applicant-plaintiff to which objections were filed by the applicant but the same were dismissed. Property of the applicant was attached. The present Regular Second Appeal has been filed thereafter, as counsel before the Executing Court advised the

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applicant to file the same. In the entire process, a delay of 995 days has been occurred but the same is bonafide and has been sufficiently explained by the aforementioned averments.

From the averments made in the application, it is apparent that after misplacement of the certified copy of the judgment and decree of the Lower Appellate Court, the applicant did not take any steps for 11 months. Even thereafter, although the certified copy was available on 16.02.2019, no steps were taken allegedly on account of wrong legal advise.

It is settled law that wrong legal advise is not 'sufficient cause' within the meaning of the expression in Section 5 of the Limitation Act, 1963.

That apart, there is no explanation for 11 months period between the misplacement of the certified copy prepared on 19.03.2018 and application made for a fresh copy.

Thus, there is no sufficient grounds for condoning the inordinate delay of 995 days in filing the appeal.

Application is accordingly dismissed.

RSA-160-2021 (O&M)

Since, the delay has not been condoned, the main appeal is also liable to be dismissed as barred by limitation.

Ordered accordingly.

March 22, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No