

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

CR-3389-2019(O&M)

Date of decision:-16.11.2021

Gurnam Singh

...Petitioner

Versus

Mohinder Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gaurav Singla, Advocate
for the petitioner.

Mr.Divanshu Jain, Advocate
for the respondent.

H.S. MADAAN, J.(ORAL)

1. This revision petition is directed against order dated 26.3.2019 passed by Additional District Judge, SAS Nagar (Mohali) vide which an application under Section 5 of the Limitation Act for condonation of delay of 708 days in filing of the appeal filed by respondent Mohinder Kumar was allowed.

2. Briefly stated, the facts of the case are that plaintiff Mohinder

Kumar had filed a suit for possession by way of specific performance of agreement to sell dated 24.12.2004 against defendant Gurnam Singh; that suit was dismissed by Additional Civil Judge(Sr.Divn.), Dera Bassi vide judgment and decree dated 11.2.2014. Feeling aggrieved by the said judgment and decree, the plaintiff had preferred an appeal before District Judge, SAS Nagar(Mohali). That appeal was filed belatedly by 708 days and an application under Section 5 of the Limitation Act for condonation of delay was filed for the reason that appellant/plaintiff had engaged Sh.Gur Rattam Pal Singh, Advocate to file appeal in the competent Court of jurisdiction; later on, the appellant was informed by some property dealer that respondent Gurnam Singh was going to sell the plot in dispute to someone else; accordingly, the applicant/appellant tried to contact his counsel and came to know that he had expired on 2.4.2014, then the appellant enquired about his case from the family members of Sh.Gur Rattam Pal Singh, Advocate and it was with great efforts that applicant/appellant found his papers and was shocked to know that no appeal was filed. Thereafter, the applicant engaged another counsel and filed an appeal. Since the limitation for filing of appeal had expired, an application under Section 5 of the Limitation Act for condonation of delay was moved. Notice of that application was given to respondent – Gurnam Singh, who appeared and contested the application. Vide order dated 25.1.2017, that application was dismissed.

3. Thereafter, the applicant Mohinder Kumar had approached High Court by way of filing revision petition, which was dismissed on 20.4.2017. That order was challenged in the Apex Court and as directed

by it review application was filed in this Court and the revision petition was then disposed of observing that lower appellate Court shall provide an opportunity to the parties to lead evidence in support of respective claims including producing AW1 Jaspreet Singh for the purpose of cross-examination. Thereafter, learned Additional District Judge, SAS Nagar(Mohali) allowed the application for condonation of delay vide order dated 26.3.2019. That order is being challenged by way of filing the present revision petition.

4. The revision petition is being resisted on behalf of the respondent.

5. I have heard learned counsel for the parties besides going through the record.

6. Learned counsel appearing for the respondent has contended that five similar cases in the form of appeals along with applications under Section 5 of the Limitation Act seeking condonation of delay of 708 days were filed before District Judge, SAS Nagar(Mohali). Those were based upon similar set of circumstances. Though learned Additional District Judge, SAS Nagar(Mohali), who had dealt with such cases had declined condonation of delay in filing of appeal but on revisions being filed, the High Court had allowed the revisions in two cases condoning the delay in filing the appeal. Following that, learned Additional District Judge, SAS Nagar(Mohali) on the present case being sent to him had also did the same by allowing application under Section 5 of the Limitation Act. The order in that regard is quite detailed and well reasoned and no fault can be found with the same.

7. Although learned counsel for the revisionist has stated that there was no justification for condonation of delay and the order passed by the Court allowing the application under Section 5 of the Limitation Act cannot be sustained but I find that the order in that regard is quite detailed, well reasoned and does not suffer from any illegality or infirmity.

8. Needless to say the Courts are there to do substantial justice between the parties, rather than adopting a hyper technical approach and in the process getting bogged down therewith. The rules of procedure are meant for advancing ends of justice and such rules are handmaid of justice. It is always desirable to decide a *lis* after hearing both the parties, rather than shutting doors of contest upon a party by adopting a very technical approach to the matter. When one party comes to the Court presenting his case, then for finding a clear picture with regard to the matter in question version of the other party should also be there before the Court. If a matter is decided considering case of one party only then that may result in miscarriage of justice, which is uncalled for. The Court after getting the versions of the contestants may proceed to decide a *lis* in accordance with law.

9. The High Court had allowed condonation of delay in some cases under similar circumstances, therefore, different yardstick could not be used in declining the prayer in this case. Even otherwise, considering the facts and circumstances of the case, the evidence available on the record, the interest of justice demanded that the application be accepted and appeal be decided on merits, rather than throwing away the case

without adjudication on a technical ground of limitation.

10. Thus, finding no merit in the civil revision petition, the same stands dismissed.

16.11.2021

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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No