

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

206

CR-8129-2019 (O&M)

Date of decision: 20.07.2021

ANIL KUMAR SONI

...Petitioner

Versus

M/S V LOCAL PROMOTERS PVT LTD AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Viren Jain, Advocate for the petitioner.
Mr. Ajay Khanna, Advocate for the respondents.

ANIL KSHETARPAL, J. (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this revision petition filed under Article 227 of the Constitution of India, the plaintiff-petitioner assails the correctness of the order passed by the Civil Judge (Sr. Div.), Gurugram on 22.10.2019, condoning the delay in filing an application under Order 9 Rule 13 CPC. The petitioner claims that the application has been filed after a delay of 75 days whereas it is the case of the respondents that the delay is only 28 days.

It has come in evidence that the applicant by whom the application has been filed, was in police custody when the defendant company was proceeded ex-parte. The application under Order 9 Rule 13 CPC is still pending. There is a decree for possession by way of specific performance of the agreement to sell against the defendant company.

The learned counsel representing the petitioner submits that the application as such was not maintainable as it was not filed by a competent person. He further contends that it was the duty of the learned Court to examine whether the application has been filed by a competent person or not.

The learned counsel fairly admits that the maintainability of application on the ground of incompetency of the applicant has not been pressed before the trial Court. In the absence thereof, it would not be appropriate for the Revisional Court to examine the issue for the first time. The main application under Order 9 Rule 13 CPC is awaiting adjudication. The petitioner may, if so advised, submit his supplementary reply drawing the attention of the Court to this aspect of the matter. If such objection is taken, this Court is certain that the Presiding Judge would proceed to decide the application under Order 9 Rule 13 CPC, in accordance with law.

Keeping in view the aforesaid facts, no ground to interfere with the discretion exercised by the trial Court in condoning the delay.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

20.07.2021
ashok

(ANIL KSHETARPAL)
JUDGE