

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

261

CR-263-2018 (O&M)
Date of decision: 09.03.2022

Mohinder Pal Singh	Versus	Petitioner
Jaideep Kaur and others		Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ashok Verma, Advocate
for the petitioner.

Mr. D.P. Gupta, Advocate
for respondent No.1.

Mr. Viney Saini, Advocate
for respondent No.3.

MANJARI NEHRU KAUL, J. (ORAL)

Vide order dated 22.04.2014 learned Civil Judge (Jr. Divn.), Chandigarh decreed the suit for possession instituted by respondent No.1-plaintiff in her favour and against the petitioner-defendant No.1 to the extent of 1/3rd share by way of partition by metes and bounds of H.No.1352, Sector 22-B, Chandigarh. The decree sheet was thereafter drawn and prepared on 22.04.2014.

The petitioner-defendant No.1 impugned the aforementioned judgment and decree before the lower appellate Court. The lower appellate Court vide order dated 20.09.2017 dismissed the appeal on account of inordinate delay of 329 days in filing of the same.

Learned counsel for the petitioner-defendant No.1 inter alia contends that the lower appellate Court failed to appreciate that the delay of 329 days in preferring the appeal had occurred on account of inaction and negligence of his counsel. It was submitted that the petitioner-defendant No.1 who is an internationally known scientist had been busy with his research work and hence not been in regular touch

with the counsel representing him before the trial Court. He further submitted that he came to know much later about the fate of the suit in question as well as the impugned judgment and decree passed against him by the trial Court. Soon thereafter, on coming to know about the impugned judgment and decree, he applied for certified copies of the same which were received by him only on 15.03.2015 and within a month he impugned the same before the lower appellate Court. Learned counsel in support of his submissions has drawn the attention of this Court to the duly sworn in affidavit of his counsel wherein it has been stated that after the impugned judgment and decree had been passed on 22.04.2014, the counsel had applied for a certified copy, however, the receipt of the application for the certified copy of the aforementioned judgment and decree had been misplaced by him. Resultantly, the counsel had to apply again for a certified copy of the aforementioned judgment and decree which led to the inordinate delay in filing the appeal. It has been vehemently urged by learned counsel that the petitioner-defendant No.1 thus could not be made to suffer due to the conduct of his counsel, moreso since he had a good case on merits.

On being put to notice, respondent No.1-plaintiff put in an appearance and opposed the prayer made by counsel opposite by submitting that the suit for possession was decided in the presence of the counsel of the petitioner-defendant No.1 and hence it could not be digested that he would have been unaware about the fate of the civil suit. Still further, it was submitted that even in case his counsel had failed to inform him about the decision rendered in the suit in question, he would have surely made some enquiries in the said regard from his

counsel or from the court concerned.

I have heard learned counsel for the parties and perused the relevant material placed on record, including the duly sworn in affidavit of the counsel for the petitioner-defendant No.1 before the lower appellate Court.

The Hon'ble Supreme Court in ***Collector Land Acquisition Anantnag and another Vs. Mst. Katiji and others : AIR 1987 SC 1353*** has observed that ordinarily a litigant would not stand to benefit by preferring an appeal at a late stage, and rather would run a serious risk. Refusing to condone delay could in many cases result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned at best the matter would be decided on merits after hearing the parties. A Court of law is to be respected not on account of its powers to legalize injustice on technical grounds but because it is capable of removing injustice and that it is what is expected of it. Moreover, a litigant cannot and should not be made to suffer due to some negligence or laxity on the part of his counsel. The Hon'ble Supreme Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others : 2013(12) SCC 649*** has reiterated the principles applicable to an application for condonation of delay by observing that the intent of the Limitation Act, 1963, is to promote substantial justice which is paramount and pivotal coupled with the fact that technical consideration should not be given undue and uncalled for emphasis. Hence, what flows from various pronouncements of the Hon'ble Supreme Court is that Courts should adopt a liberal, pragmatic and

justice oriented approach and a litigant should not be made to suffer for the misdemeanour or inaction on the part of his counsel. No doubt it was indeed expected from the petitioner-defendant No.1 to be more vigilant but the failure of the petitioner-defendant No.1 in not being vigilant and his counsel representing him before the trial Court also failing to inform him promptly about the suit being decreed against him should not have been made a ground for ousting him from the litigation with respect to a property which concededly is of a valuable nature.

As a sequel to the above, the petitioner-defendant No.1 has been able to convincingly explain the delay in preferring the appeal against the impugned judgment and decree passed by the trial Court. Having said that due to the inaction on the part of the petitioner-defendant No.1 and/or his counsel representing him before the trial Court, which definitely has resulted in the litigation getting delayed the other party needs to be compensated by way of costs.

The revision petition is accepted/allowed. The impugned order passed by the learned appellate Court dated 20.09.2017 is set aside. The appeal and application under Section 5 of the Limitation Act, 1963 for condonation of delay are hereby ordered to be restored to their original numbers. The petitioner-defendant No.1 is burdened with costs of Rs.10,000/- which shall be a condition precedent to be paid to respondent No.1-plaintiff. Both the parties are directed to appear before the lower appellate Court on 18.04.2022.

09.03.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No