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

**CR-752-2022 (O&M)
Date of Decision : 23.08.2022**

Ranjit Singh

...Petitioner

Versus

Amritpal Singh

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Rajwinder Kaur, Advocate for the petitioner.

ALKA SARIN, J.

The defendant-petitioner has filed this revision petition to challenge the order dated 05.10.2021 whereby the lower Appellate Court has dismissed his application for condonation of delay in filing the first appeal.

The brief facts are that the plaintiff-respondent filed a suit for possession by way of specific performance of agreement to sell dated 22.07.2013 of house property bearing No.B-17/335 measuring 02 Marlas 44 sq. ft. by directing the defendant-petitioner to execute the sale deed in favour of the plaintiff-respondent on receiving the balance amount of Rs.1,80,000/- with a consequential relief of permanent injunction restraining the defendant-petitioner from selling, alienating, transferring or mortgaging the suit property in any manner to any other person except the plaintiff-respondent, or in the alternative suit for recovery of Rs.8,00,000/- with interest at the rate of 18% per annum till realization. The defendant-

petitioner appeared and filed his written statement and contested the suit. On 27.07.2012 the Trial Court framed the issues. The plaintiff-respondent led his evidence while the defendant-petitioner failed to lead any evidence and his evidence was closed by order.

Vide judgement and decree dated 26.09.2017, in the presence of counsel for the parties, the Trial Court decreed the suit of the plaintiff-respondent.

In October 2018 the defendant-petitioner filed an appeal before the lower Appellate Court against the judgement and decree passed by the Trial Court. This appeal was accompanied with an application for condonation of delay stating therein that the appeal could not be filed within the period of limitation as counsel for the defendant-petitioner did not obtain the copy of judgment immediately after the pronouncement of the judgment and did not inform the defendant-petitioner in time and that on return from Dubai the defendant-petitioner engaged other Advocate who advised to file an appeal and he also signed the necessary papers but he did not file appeal. When the defendant-petitioner asked his second counsel he told that the signed papers had been misplaced and he could not file appeal. As such, delay in filing the appeal is neither wilful nor intentional but due to the said reasons.

The plaintiff-respondent contested this application for condonation of delay and on 28.01.2019 the lower Appellate Court framed issues on the application for condonation of delay. The parties led their evidence and vide impugned order dated 05.10.2021 the lower Appellate Court dismissed the application for condonation of delay holding *inter-alia*

that :

“9. It is clear from the cross-examination of AWI Ranjit Singh, that at the time of decision of main case, he was in India. He was in regular touch with his Counsel. Even he was present at the time of filing appeal in India. The contention of Learned Counsel for appellant-applicant that he was at Dubai, fails to the ground. As such, there is huge delay of more than a year in 3 filing the appeal. Therefore, in view of above discussion, appellant-defendant has failed to prove his case for condonation of delay in filing appeal, hence issue No.1 is decided against the appellant-defendant and in favour of respondent-plaintiff.”

The lower Appellate Court further held that *“In view of my findings on issue No.1, this application for condonation of delay filed by the appellant-defendant is hereby dismissed. Lower Court record be returned and file be consigned to the record room, after its completion”*. Hence, the present civil revision petition under Article 227 of the Constitution of India.

Learned counsel for the defendant-petitioner was asked to satisfy the Court as to how a civil revision petition was maintainable in view of the fact that the appeal of the defendant-petitioner itself stood decided vide the impugned order wherein the lower Appellate Court has ordered that the Lower Court record be returned and file be consigned to the record room after its completion meaning that there was no appeal pending before the lower Appellate Court. Infact, in para 8 of the civil revision petition it is

stated by the defendant-petitioner that *“Thereafter the learned ADJ, Hoshiarpur without considering the facts and circumstances of the application decided the appeal on the basis of delay vide order dated 05.10.2021 without applying its judicious mind”*. In para 9 of the civil revision petition it is stated *“That dismissing the appeal on the basis of delay is causing prejudice to the genuine rights of the petitioner”*. Thus, it is patent that the defendant-petitioner is aware about his first appeal being dismissed by the lower Appellate Court. The defendant-petitioner cannot merely challenge the order dismissing his application for condonation of delay by filing a revision petition when he has a remedy of filing a second appeal against the dismissal of his first appeal by the lower Appellate Court. In the matter of **Shyam Sunder Sarma vs. Pannalal Jaiswal [(2005) 1 SCC 436]**, the Supreme Court held as follows :

“9.1. In Sheodan Singh v. Daryao Kunwar rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held : (SCR pp. 308 H-309 B)

“We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the

trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

It is clear that if the delay in filing the appeal is not condoned and the first appeal is dismissed, a second appeal under Section 100 CPC would be maintainable. It is settled law that an appeal under Section 96 CPC is against a decree. On the decision of such an appeal the lower Appellate Court draws up a decree as laid down in Order 41 CPC. Once a decree sheet is prepared the unsuccessful party can challenge the same by filing a second appeal. If a formal decree sheet is not drawn up then the formal expression of an adjudication which conclusively determines the rights of the parties would be the decree as per Section 2(2) CPC. The defendant-petitioner cannot merely challenge the order dismissing his application for condonation of delay by filing a revision petition when he has a remedy of filing a second appeal. Moreover, in the present case the decree passed against the defendant-petitioner already stands satisfied.

In view of the settled law, this civil revision petition is not maintainable as the lower Appellate Court has finally decided the first appeal while dismissing the application for condonation of delay. The defendant-petitioner has chosen not to challenge the decision by the lower Appellate Court on his first appeal though this remedy was available to him under Section 100 CPC. In view of the reasons recorded above, I do not deem it appropriate to delve into the merits of the case as this civil revision petition is itself held to be not maintainable.

The civil revision petition is dismissed. Pending applications, if any, also stand disposed off.

23.08.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO