

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

162

CR-1243-2022

Date of decision: 11.11.2022

CHARAN SINGH

..Petitioner

Versus

TEJINDER SINGH PUNIA AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Sharma, Advocate
for the petitioner.

Mr. K.S. Billing, Advocate
Mr. Saurav Bhatia, Advocate
for respondent No.1 and 15.

Mr. Baljinder Singh Sra, Advocate
for respondent No.13.

Mr. Jagdish Mitter, Advocate
for respondent No.14.

Mr. Mrigank Sharma, Advocate
for respondent No.17 & 18.

ANIL KSHETARPAL, J(Oral)

The petitioner's first appeal filed against the order passed by the trial Court while deciding his suit under Order XVII Rule 3 CPC has been dismissed by the First Appellate Court on 07.05.2018. He filed first appeal along with an application for condonation of delay of 38 days. Before the delay could be condoned, the application as well as the appeal was dismissed for non-prosecution. His application for restoring the appeal under Order XLI Rule 19 CPC along with an application for condoning the delay of 83 days has also been dismissed.

It is evident that the First Appellate Court has taken a hyper technical view of the entire matter. The First Appellate Court is the last Court for re-appreciation of evidence and facts of the case. The First Appellate

Court is expected to decide the cases on merits rather than on technicalities. The suit pertains to immovable property. Already, the trial Court has dismissed his suit on account of default. Before the First Appellate Court, he had challenged the aforesaid order.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

The First Appellate Court has held that the petitioner has failed to give reasonable explanation for not filing the application for restoration of the appeal within the prescribed time. The petitioner claims that he is an illiterate person and on account of paucity of funds, he could not file the application previously. The Court has held that only Court fee of Rs.10/- is to be affixed. For filing an application for restoration, the petitioner is also required to engage a counsel. The Court should have been more indulgent while taking a holistic view of the matter.

Keeping in view the aforesaid facts, the order passed by the First Appellate Court on 24.01.2022, is set aside. In order to avoid further delay, not only the appeal is restored to its original number but even the delay in filing the first appeal is also condoned. Let the First Appellate Court decide the appeal on merits within a period of one month.

The parties through their counsel are requested to appear before the First Appellate Court on 12.12.2022. The appeal shall stand restored to its original number.

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

November 11th, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*