

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

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**CM No.10960-CII of 2020 in/and
SAO No.25 of 2020 (O&M)
DATE OF DECISION : 19th JANUARY, 2022**

Rajwinder Singh

.... Appellant

Versus

Harjit Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Brijeshwar Singh Bhalla, Advocate,
for the applicant-appellant.

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RAJBIR SEHRAWAT, J. (Oral)

CM-10960-CII-2020

This is an application for condonation of delay of 420 days
in filing the appeal.

For the reasons mentioned in the application, the same is
allowed. The delay in filing the appeal is condoned.

Main Case

The brief facts, as involved in this appeal are that the respondents filed a suit for declaration, permanent injunction and mandatory injunction qua partition of the property as detailed in the head note of the plaint. The said suit was dismissed by the trial Court vide the judgment and decree dated 01.02.2014. However, during the pendency of the suit, the plaintiffs-respondents had filed an application for leading additional evidence. But the same was not decided by the trial Court at the time of dismissal of the suit. The plaintiffs-respondents preferred appeal before the lower Appellate Court. During the argument before the

lower Appellate Court, it was pointed out by the respondents that their application for leading additional evidence was not decided by the trial Court either way. It was further submitted that the documents which had been sought to be placed on record had material bearing on the aspect of decision of the suit. Hence, non-decision of the said application has seriously prejudiced the case of the respondents. Agreeing with the respondents, the lower Appellate Court remanded the matter to the trial Court for decision afresh after taking a final decision on the application moved by the respondents for additional evidence. It is against that order, that the present appeal has been preferred by the appellant, who was the defendant in the original suit.

Arguing the case, it is submitted by the counsel for the appellant that the trial Court has erred in setting aside the well reasoned judgment and decree passed by the Court below. The documents, which the respondents wanted to lead in evidence were already on record of the trial Court, though marked as such. Hence, it was the fault of the respondents only in not leading the evidence qua the said documents at the appropriate time. The final judgment and decree passed in favour of the appellant could not have been set aside only for their own fault of the respondents.

Having heard the counsel for the appellant and having considered the case file, this Court finds that the lower Appellate Court has categorically recorded, that the documents which the respondents had sought to place on record, may have material bearing on the decision of the suit as such. In fact, the documents which were sought to be placed on record by way of additional evidence were relating to the ejectment

petition filed against the respondents, which may have bearing qua the entitlement to and possession over some of the property which was subject matter of the partition. Therefore, it cannot be said; on the face of it; that the documents had no bearing on the decision of the suit. Moreover, whether the respondents were entitled to lead the said documents in evidence or not is an issue to be decided by the trial Court by passing an appropriate order. However, that order was not passed by the trial Court. Hence, this Court finds itself in agreement with the decision of the lower Appellate Court in remanding the matter to the trial Court for decision afresh after the decision upon the application for leading additional evidence.

In view of the above, finding no merit in the present appeal, the same is dismissed.

19th JANUARY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>