

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

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**CR No. 4171 of 2022 (O & M)
Date of Decision : 9.11.2022**

Attar Kalan**..... Petitioner****Versus****Jagmal Singh and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present : Mr. J.S. Yadav, Advocate, for the petitioner

Mr. Nipun Vashist, Advocate, for the caveators

TRIBHUVAN DAHIYA, J.

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 21.9.2022 (Annexure P-5) passed by the lower Appellate Court whereby first appeal filed by the petitioner/defendant no.7 has been dismissed being barred by limitation.

2. The facts in brief are, the suit for declaration filed by the respondents no.1 to 5/plaintiffs was decreed by the trial Court vide judgment and decree dated 23.10.2018. It was held that petitioner/defendant no.7 and her husband/defendant no.1 were liable to remove their encroachment from the plaintiffs' properties and deliver its actual vacant possession to them. The petitioner/defendant no.7 was entitled to challenge the judgment by filing the appeal within 60 days of passing the judgment. The same was, however, filed on 9.10.2020 along with an application for condonation of 716 days delay in filing the appeal (Annexure P-3). It was considered and rejected by the lower Appellate Court, resulting in dismissal of the appeal as well.

3. Perusal of the application for condonation of delay shows that even the basic particulars required to seek condonation of delay have not been mentioned therein, like, when did the petitioner come to know about the impugned judgment. No attempt has been made to explain each day's delay in

filing the appeal. The lower Appellate Court has observed that application to obtain certified copies of the impugned judgment and decree was filed only on 14.7.2020, after about one year and nine months of passing of the judgment. It is also apparent on record that the plaintiffs' witnesses were duly cross-examined, and a witness (respondent no. 9) was examined on behalf of the defendants as well. Therefore, it cannot be believed that the petitioner/defendant no.7 was not aware about the judgment of the trial Court, as pleaded by her; nor can it be believed that almost for three years she would not care to find out about the status of the case. The averments in the application are clearly not believable. The application is not *bona fide*. It has been filed on concocted grounds, in a very casual manner without pleading even basic minimum particulars required to seek condonation of delay.

4. Further, no appeal against the impugned judgment and decree has been filed by any other defendant. Learned counsel for the caveators/plaintiffs has informed the Court that the decree in question stands executed and possession of the suit land stands delivered after removal of encroachments. Accordingly, the execution application filed by the plaintiffs has been disposed of as having been satisfied, vide order dated 27.9.2022.

5. In view of the aforesaid, this Court is not inclined to interfere with the well reasoned order passed by the lower Appellate Court dismissing the application for condoning inordinate delay of 617 days in filing the appeal, as well as the appeal.

6. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

9.11.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No