

114

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-14416-CII-2022 in/and
CR-6898-2018 (O&M)
Date of Decision: 29.10.2022

RAJ SINGH AND ANR

.. Petitioners

Vs.

RAMESHWAR DAYAL AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Gurmohan Singh Bedi, Advocate for applicant-petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana for
respondents No.2 and 3.

...

Manoj Bajaj, J. (Oral)

CM-14416-CII-2022

The instant application is for pre-poning the date of hearing of
the main petition to an early date.

Heard.

For the reasons mentioned in the application, the same is
allowed and the date of hearing is pre-poned to today.

CR-6898-2018 (O&M)

Petitioners (defendants) are aggrieved against the decision
dated 23.07.2018 (Annexure P-7), whereby the Addl. District, Judge,
Rewari has refused to condone the delay of 56 days in filing the civil appeal
against the judgment and decree dated 25.09.2015 (Annexure P-4) passed
by the Civil Judge, (Jr. Divn.), Rewari in a Civil Suit No.458 of 2013 filed
by plaintiff (respondent No.1).

petitioners were diligent in pursuing their remedy of appeal against the judgment and decree dated 25.09.2015 passed in the suit by plaintiff (respondent No.1) and had engaged the counsel, but the appeal was not filed by the said counsel. He submits that the certified copy of the judgment and decree dated 25.09.2015 was delivered on 12.10.2015, which was handed over to the counsel, but as the filing was not done, the petitioners were compelled to engage another counsel, and consequently, he had to apply again for the certified copy of the judgment and decree dated 25.09.2015. He submits that in this entire exercise, the filing of the appeal was delayed by 56 days and the same was beyond their control, but the appellate court has erroneously refused to condone the delay, thereby shutting the doors of appellate Court to examine the correctness and validity of the judgment and decree in favour of the plaintiff (respondent No.1). He prays that the impugned order be set aside.

Heard.

Though the notice of motion in the revision petition was issued on 04.12.2018, but despite service, no one has appeared on behalf of the respondent no.1 (plaintiff).

Upon hearing the learned counsel and considering the above background, this Court finds that the petitioners (defendants) have given sufficient explanation for delay in filing the appeal against the judgment and decree dated 25.09.2015, however, the appellate Court has not examined the background of this case carefully while dismissing petitioners' application under Section 5 Limitation Act 1963 by passing a non-speaking order. Though the appellate Court has not dismissed the appeal on merits, but only as a consequence of refusal to condone the delay in filing the appeal, the

decree was also drawn.

Though the decree dated 23.07.2018 is appealable, but on this technical ground, this Court is not inclined to refuse indulgence, as the order dated 23.07.2018 cannot be termed as a judgment, therefore, this Court deems it proper to exercise the superintendence powers under Article 227 Constitution of India for setting aside the order dated 23.07.2018, which suffers from grave illegality and impropriety.

Resultantly, the revision petition is allowed. The impugned order dated 23.07.2018 (Annexure P-7) is hereby set aside and the delay in filing the appeal is condoned. It is further directed that the appeal bearing No. CA-4-2016 filed by the petitioners be decided on merits in accordance with law. The parties are directed to appear before the appellate Court on 05.12.2022.

29.10.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No