

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

[116]

CRR-291-2023**Date of Decision:09.02.2023**

Parminder Singh

..... Petitioner

Versus

Kiranpreet Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. B.S.Toor, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition is seeking setting aside of the order dated 30.09.2022 whereby learned Addl. Sessions Judge, Ludhiana has dismissed application of the petitioner filed under Section 5 of the Limitation Act seeking condonation of delay in filing the appeal.

Brief facts of the case are that the petitioner preferred an appeal before the Sessions Court assailing the order dated 28.10.2014. The appeal was filed alongwith an application seeking condonation of delay of 575 days. Petitioner sought condonation of delay on the ground that certified copy of the order dated 28.10.2014 was applied on 26.05.2016 and the copy was prepared on 27.05.2016 and was delivered on the same date. On 28.05.2016 and 29.05.2016, there were holidays, so the appeal was filed on 30.05.2016. It was further contended that learned counsel who was representing the petitioner before the Lower Court, did not intimate him about the proceedings of the case and did not not advise him to lead any evidence and even did not cross-examine the witnesses of the respondents. The order passed by the learned Lower Court was

never explained to the applicant/appellant (petitioner herein) by his counsel nor he was advised to file an appeal.

The learned Addl. Sessions Judge, Ludhiana vide order dated 30.09.2022 has dismissed the application of the petitioner seeking condonation of delay.

Learned counsel for the petitioner submits that findings recorded by the Appellate Court are contrary to law. Learned counsel appearing before the trial Court did not apprise the petitioner about filing of appeal. Thus, petitioner could not file an appeal before the Appellate Court.

I have heard learned counsel for the petitioner and perused the record.

The relevant extracts of the impugned judgment dated 30.09.2022 read as:-

“From perusal of the record and other appeal filed by the respondents, it revealed that respondents have filed appeal against the impugned order dated 28.10.2014 on 03.01.2015. There was delay of 5 days approximately in filing the said appeal. The same has already been condoned, but in the said appeal the respondents now applicants have appeared through their counsel on 4.02.2015. Meaning thereby the applicants came to know about the order dated 28.10.2014 as well as filing of the appeal by the respondents, but in spite of the said knowledge, no appeal was filed till 30.05.2016. The certified copy of the order was filed on 26.05.2016 only on the advice of new counsel Sh. HS Toor, Advocate on 25.05.2016, the appeal has been filed. Ignorance of law is no excuse. When the applicants themselves have not acted diligently in spite of having sufficient knowledge of the passing of the order by the Ld. Trial Court and even on filing of the appeal by the opposite party, they cannot take benefit of their own wrong. They have failed to explain the delay of each and every

day and no sufficient cause has been shown to condone the delay in filing the appeal. The applicants themselves were required to contact their counsel. So, the case law cited supra by ld. Counsel for the applicants is not applicable to the facts of the present case. Therefore, this application is without any merits and the same stands dismissed.”

From the perusal of the impugned order dated 30.09.2022, it is quite evident that respondents herein preferred an appeal against the order dated 28.10.2014 on 03.01.2015 with a delay of 05 days. Petitioner herein appeared before the Appellate Court through counsel on 04.02.2015 means the petitioner came to know about the impugned order on 04.02.2015 and in spite of having knowledge of appeal filed by other side, the petitioner opted not to collect certified copy of impugned order and further did not file appeal till 30.05.2016. The petitioner is not supposed to explain the delay of each and every date, however, there is some object of prescription of limitation period. Delay cannot be condoned in a mechanical manner. The Court cannot come for rescue of the back benchers. It is a case of total lapse or negligence and intentional delay on the part of the petitioner.

No ground is made out for setting aside of order dated 30.09.2022 passed by learned Addl. Sessions Judge, Ludhiana.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.02.2023
Anjal

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