

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 773 of 2017****Date of Decision: 18.08.2023**

Kashmir Singh

... Petitioner(s)

Versus

Malkiat Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajiv Joshi, Advocate
for the petitioner(s).

Mr. Nitin Kaushal, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The first appeal filed by the petitioner has been dismissed by the First Appellate Court while refusing to condone the delay of 311 days in filing the appeal. In the application, the petitioner stated that they have engaged Sh.K.L.Banger, Advocate, at Phillaur to file an appeal. His professional fee along with the other expenses were paid and the memorandum of appeal was drafted. However, the learned counsel did not file the appeal.

2. On being questioned by the petitioner, Mr. K.L.Banger, Advocate, apologized and returned the memorandum of appeal along with the affidavit of the appellant which was attested on 08.01.2015. The First Appellate court has dismissed the application on the ground that the petitioner failed to disclose the sufficient cause for not filing the appeal.

Heard the learned counsel representing the parties, at length and

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with their able assistance, perused the paper-book.

4. The dispute in the suit is with respect to the agricultural land measuring 25 kanals. The petitioner's suit was dismissed by the trial Court on 13.11.2004. In the trial Court, the petitioner was represented by Mr.K.L.Banger, Advocate, who was practicing at Phillaur. However, the appeal was to be filed in the District Courts located at Jalandhar. The petitioner engaged the services of Mr. K.L.Banger, Advocate, for filing the appeal. However, as already noticed, Mr.Banger has failed to file the appeal. In these circumstances, the First Appellate Court should have taken a holistic view of the matter. The approach of the Court should always be pragmatic. The petitioner has not gained anything due to the delay. Furthermore, he has already suffered a lot and due to the said circumstances, he filed this revision petition.

5. Keeping in view the aforesaid facts, the present revision petition is allowed and the impugned order passed by the First Appellate Court while refusing to condone the delay is set aside. The appeal filed by the petitioner before the First Appellate Court is restored to its original number with a direction to dispose of the appeal, positively, within a period of one year from the date of receipt of the certified copy of this order. The parties, through their learned counsel, are directed to appear before the First Appellate Court on 06.09.2023.

(Anil Kshetarpal)
Judge

August 18, 2023
"DK"

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No