

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

Civil Revision No. 1422 of 2020(O&M)

Date of Decision: 25.07.2023

Suresh Chand & Ors.

...Petitioners

Versus

Sandeep Kumar & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. P.R. Yadav, Advocate
For the petitioners.**

**Mr. J.P. Sharma, Advocate
For respondent No.1.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioners/defendants against the order dated 06.05.2019 (Annexure P-5) passed by the Court of District Judge, Narnaul whereby an application filed by the petitioners under Section 5 of Limitation Act for condonation of delay of 11 days in filing civil appeal No. 91/ 2016 titled as Suresh Chand & Ors. Vs. Sandeep & Ors., has been dismissed.

2. The brief facts of the case are that respondent No.1 Sandeep Kumar filed civil suit for permanent injunction with regard to property in dispute against the petitioners and some other persons. The said civil suit was contested by the petitioners and was decreed in favour of respondent No.1 Sandeep Kumar vide judgment and decree dated 02.03.2016 by the Court of Civil Judge (Jr. Divn.), Mahendergarh. The petitioners being aggrieved by the said judgment and decree filed civil appeal in the Court of District Judge, Narnaul and along with the appeal an application was also

filed seeking condonation of delay of 11 days in filing the appeal. The application filed under Section 5 of Limitation Act has been dismissed by the said Court vide impugned order dated 06.05.2019 (Annexure P-5) and consequently the appeal also stands dismissed.

3. Being aggrieved, the petitioners have filed the present revision petition.

4. The counsel for the petitioners submits that there was no intentional delay on the part of the petitioners to file the appeal and there was nominal delay and that too on account of the inaction of the counsel for the petitioners. The counsel for the petitioners further submits that delay in filing of the appeal has been fully explained by the petitioners and as such the application filed under Section 5 of Limitation Act by the petitioners deserves to be allowed and the main appeal should be heard on merits.

5. On the other hand, the present petition is resisted by the counsel for respondent No.1, who while supporting the impugned order, submits that the petitioners failed to prove that there was sufficient cause due to which they failed to file appeal within prescribed period of limitation.

6. I have considered the submissions made by counsel for the parties.

7. It is settled that the Court is not required to take a pedantic approach, while dealing with an explanation given by a party regarding delay in filing the appeal/ application. Further, it is always fair and appropriate that matters be heard on merits rather than shutting the doors of justice at the threshold that too on the ground that there was just 11 days delay in filing of the appeal by the petitioners. The Court can condone delay

in filing of appeal, if the party satisfies the Court that it was having sufficient cause due to which it could not file appeal within the period of limitation. In the instant case, there is nothing on record to show that there was negligence on the part of the petitioners or the delay in filing of the appeal occurred for want of due diligence on their part. Rather, it appears that the First Appellate Court took about three years to decide the application moved by the petitioners under Section 5 of Limitation Act. So, there are sufficient grounds to condone delay of 11 days in filing the appeal by the petitioner.

8. For the foregoing reasons, the present petition is allowed and impugned order dated 06.05.2019 is set aside. However, in order to balance the equities the petitioners shall be subjected to costs of Rs.5000/- to be paid by them to respondent No.1 as a condition precedent.

9. Consequently, the main appeal is ordered to be restored to its original number and be decided afresh after hearing the parties, on merits. The parties are directed to appear before the Court concerned on 28.08.2023.

25.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No