

2023:PHHC:108941

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

CR-3672-2022 (O&M)

Date of decision: 18.08.2023

Madan Singh

..Petitioner

Versus

Ghanshyam Dass

.Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rishav Jain and
Mr. Kanish Jindal, Advocates for the petitioner

Mr. P.R. Yadav, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. On 03.07.2023, the following order was passed:-

“The learned counsel representing the petitioner inter-alia contends that the First Appellate Court has erred in refusing to condone the delay of 130 days in filing the miscellaneous appeal without appreciating the reasons in the proper prospective. He submits that the petitioner on account of kidney failure underwent its transplant in the year 2014 and thereafter, he has been continuously visiting the doctors from time to time in order to take all the necessary precautions.

Notice of motion for 19.07.2023.

Dasti only.

The petitioner shall have liberty to serve the respondent through his counsel in the trial court.

To be listed in the urgent list.”

2. The only issue that requires adjudication in the present case is, “whether the petitioner has explained delay in filing the first appeal?”

The First Appellate Court has held that the petitioner has failed to

prove that he was bed ridden during the period from 16.08.2022 to 01.02.2023 and his daughter is a practising Advocate. Therefore, no ground to condone the delay is made out.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. This revision petition has been filed to challenge the order dated 25.05.2023, passed by the First Appellate Court.

5. On the one hand, the learned counsel representing the petitioner reiterates his submissions, which have already been extracted, whereas on the other hand, the learned counsel representing the respondent submits that the explanation furnished by the petitioner is not sufficient to condone the huge delay of 130 days. He also relies upon the judgment passed in **Ajay Dabra vs. Pyare Ram and others 2023 AIR (SC) 698**.

6. On re-appreciation on evidence, the First Appellate Court is the last court of findings of fact. It is an important right available to a party to get the evidence re-appreciated. No doubt, for availing the remedy of appeal, the provisions of Limitation Act, 1963, are required to be strictly construed, however, Section 5 of the Limitation Act, 1963 enables the court to extend i.e condone the limitation period, if the party explains the delay to the satisfaction of the court. In the present case, it is not in dispute that the petitioner underwent a kidney transplant surgery in the year 2014. He claims to be regularly visiting the doctors in order to prevent re-occurrence. While deciding such applications, the First

Appellate Court is expected to take a holistic view of the matter. If the delay caused in filing is not condoned, a party having a meritorious case may not get justice. In such circumstances, Hon'ble Supreme Court has repeatedly held that a liberal view should be taken. The petitioner has produced certain prescriptions and invoices to prove that he was under the process of getting constant treatment. In the opinion of this Court, the explanation furnished by the petitioner is sufficient to condone the delay of 130 days. In the judgment relied upon by the learned counsel representing the respondent, the court held that the appellant was capable of purchasing the court fees, however, he did not pay the court fee. He could have filed the appeal even though it was deficient in court fee but the same was not filed. In that context, the court refused to condone the delay. With greatest respect, the aforesaid judgment is not applicable to the facts of the present case.

7. Keeping in view the aforesaid facts, the delay of 130 days in filing the appeal is condoned. The first appeal filed by the petitioner is restored to its original number. The parties through their learned counsels are directed to appear before the First Appellate Court on 12.09.2023 and the court shall make all sincere endeavours for the expeditious disposal of the case.

8. Disposed of, accordingly.

9. All the pending miscellaneous applications, if any, are also disposed of.

18.08.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE