

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CR-6886-2019 (O&M)
Date of Decision :21.02.2023

Naresh

...Petitioner

Versus

Amita Dabas

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Mani Ram Verma, Advocate for the petitioner.

Mr. Rajat Mor, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

In the present revision petition, the challenge is to order dated 02.08.2019 (Annexure P/3) by which, application seeking condonation of delay in filing the appeal has been allowed and the appeal was considered on merits and interim order was granted.

Learned counsel for the petitioner argues that once it is a conceded position that the appeal preferred by the respondent was time barred, the said delay could not have been condoned without issuance of notice and without seeking objection from the petitioner to the said prayer hence, order dated 02.08.2019 (Annexure P-3) is liable to be set aside.

Learned counsel for the respondent submits that the impugned order was passed in the presence of both the parties after hearing the respective counsel for the parties hence, the impugned order dated 02.08.2019 (Annexure P/3) may kindly be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, there is an application seeking condonation of delay, the notice of the same has to be issued with opportunity to the other side so as to allow the respondent to raise appropriate objections, if any, and in case the other side does not have any objection, the same needs to be noted in the order that despite the grant of opportunity, no objections are raised.

In the present case, it is a conceded position that on the date of passing of impugned order, though, notice was issued and then delay was condoned but without giving any opportunity to raise objections or to file written reply to the same.

That being so, it cannot be said that due opportunity to the petitioner was given to raise objections to the prayer of the respondent for condonation of delay in filing the appeal preferred against the judgment and decree dated 23.01.2015 passed by the trial Court.

Keeping in view the above, order dated 02.08.2019 (Annexure P/3) is set aside with liberty to the Lower Appellate Court to pass a fresh order after giving due opportunity to the petitioner in case they intend to raise any objections qua the prayer of the respondent for condonation of delay in filing the appeal.

As the order dated 02.08.2019 (Annexure P/3) condoning the delay in filing the appeal has been set aside, the order already passed in appeal will be subject to any order to be passed afresh by the Lower Appellate Court on the application seeking condonation of delay in filing the appeal. Hence, in order to maintain parity, till the fresh order on the application seeking condonation of delay in filing the appeal is passed by

the Lower Appellate Court, no proceedings qua the execution of the decree in question will be undertaken.

February 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No