

CR-922-2022 (O&M)
Date of decision :15.04.2024

...Petitioner

...Respondents

Present: Mr. Nipun Vashisht, Advocate
for the petitioner.

Mr. Ankur Lal, Advocate
for the respondent No.4.

ANIL KSHETARPAL, J. (Oral)

1. The First Appellate Court has refused to condone the delay of 05 months in filing the first appeal. Through this Appeal, the plaintiff assails the correctness of such order.
2. Originally, the plaintiff filed a suit for specific performance of the agreement to sell, in which, the trial Court granted an alternative relief of recovery of the amount alongwith interest. While filing the first appeal, the appellant filed application for condoning delay of approximately 05 months on the ground that he and his father received injuries and were not maintaining good health, hence, previously the appeal could not be filed within time.
3. The First Appellate Court has dismissed the application on the ground that the appellant has not produced any medical evidence to prove that he is not keeping good health.
4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. Learned counsel representing the petitioner submits that the view taken by the First Appellate Court is myopic. He submits that the medical reports pertaining to the petitioner's father were produced, which were sufficient to prove the sufficient cause. He submits that the First Appellate Court should have decided the appeal after condoning the delay.

6. *Per contra*, learned counsel representing respondent No. 4 submits that the certified copy of the judgment and decree passed by the trial Court was available on 01.11.2016, however, the appeal was filed on 30.03.2017. He submits that there is no explanation for seeking condonation of delay of 05 months.

7. This Court has considered the submissions made by learned counsel representing the parties.

8. The First Appellate Court is the last Court of facts and law. The First Appellate Court can re-appreciate the evidence while deciding the appeal, which is not permissible in the second appeal. While considering the application for condonation of delay in filing the appeal, the Court is required to take a pragmatic view, which advances the cause of justice. Here is a case where the petitioner has proved that his father was not keeping good health and was hospitalized. In such circumstances, even if, the petitioner failed to produce his own medical record, however, the medical record pertaining to the petitioner's father should have been sufficient to condone the delay. In such like cases, the Court is required to take a holistic view while making efforts to dispose of the matters after discussing merits of the case rather than in defaults.

9. Keeping in view the aforesaid discussion, the impugned order dated 07.07.2021 is set aside. The delay of 05 months in filing the first appeal

is condoned with the direction to the First Appellate Court to decide the appeal expeditiously.

10. The revision petition stands allowed.
11. The parties through their counsel are directed to appear before the First Appellate Court on 15.05.2024. The first appeal is restored to its original number.

15.04.2024

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Whether speaking/reasoned :
Whether Reportable :

(ANIL KSHETARPAL)

JUDGE

Yes No
Yes No