

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 1791 of 2022 (O&M)****Date of Decision: 09.01.2024**

Vishal Retail Limited and Another

... Petitioner(s)

Versus

Hardayal Singh Dhillon and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Aman Bansal, Advocate
for the petitioner(s).Mr. Rahul Sharma, Advocate
for the respondent No.1 and 2.**Anil Kshetarpal, J.**

1. Ordinarily, the Court is liberal in condoning the delay in filing the appeal, however, the facts of this case establish that the petitioners are the habitual defaulters.

2. The petitioners herein were the tenants in the premises owned by the respondents. A suit for possession for the recovery of rent and damages for the use and occupation was filed the year 2011. The petitioners, who were the defendants before the trial court, did not file the written statement. As a consequence, their defence was struck off. They filed a revision petition which was dismissed. Ultimately, an *ex parte* judgment and decree was passed on 18.07.2016 for the recovery of ₹51,11,090/-. During the pendency of the suit, the respondents entered into possession of the property. Thereafter, the petitioners filed an application under Order IX Rule

to set aside the *ex parte* decree. An application for condonation of delay of 187 days was also filed. Ultimately, the application under Order IX Rule 13 CPC was dismissed on 25.05.2017, on the grounds of delay as well as on merits. The petitioners have not filed an appeal within the prescribed time period. After the passage of a substantial period of time, the petitioners filed an appeal along with an application for condonation of delay of 115 days. The First Appellate Court, after examining the reasons given for seeking the condonation of delay, dismissed the application on the ground that the petitioners failed to prove sufficient reasons. This revision petition has been filed to assail the correctness of the order dated 08.03.2022.

3. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioners submits that the First Appellate Court has erred in refusing to condone the delay in filing the appeal as the delay is required to be condoned to enable the parties to contest the case on merits. He further submits that the First Appellate Court should have taken a liberal view in the facts and circumstances of the case.

5. On the other hand, the learned counsel representing the respondents submits that the petitioners have been dealing with the litigation in a casual manner. He further submits that the litigation is pending for the last 13 years.

6. The First Appellate Court, after examining the case in detail, has recorded the following reasons while refusing to condone the delay:-

“9. Thus from the evidence on record, it is clear that this
AWI Jubin Ahuja, the person who was authorised to look after

the proceedings before the court at Khanna had negligently followed court proceedings. He had made excuse that present applicant, on resignation of Mr. Sheru one of the employee, could not get information about the dismissal of the application under order 9 rule 13 CPC before the Courts at Khanna but he had failed to substantiate this contention through any evidence pertaining to employment, salary of Mr. Sheru. There is nothing on record as to when Sheru was appointed and exact date when he had resigned. Rather, he himself admitted that he himself had been appearing before the court at Khanna in proceedings. Further perusal of impugned order also shows that counsel Mr. Baljinder Singh was always appearing on behalf of the present applicant before the trial court. He was also their counsel in execution petition and they were informed well in time by the counsel regarding dismissal of objections in execution petition then why lawyer will not inform about dismissal of application under order 9 rule 13 CPC. Moreover, no action has been taken against the concerned lawyer by the company which shows that it is just a made up excuse that lawyer had failed to inform them regarding dismissal of under order 9 rule 13 CPC application. It seems that present applicant was watching the outcome of objections filed to execution and only on its dismissal, tried its luck to pursue remedy under order 9 rule 13 CPC. Thus, it is clear that present appellant had intentionally filed the present appeal with delay.

10. Further perusal of file also shows that application under order 9 rule 13 CPC has been dismissed by the trial court on the ground of delay in filing the application. Moreover, the present respondent while appearing as witness has specifically made allegations that present appellant is intentionally delaying the matter and perusal of file also shows that applicant was proceeded against *exparte* on 13.6.2011 in main appeal but again summons were issued to them on 27.7.2011 for 13.9.2011. The lawyer had appeared on behalf of present applicant on 23.5.2012 and case was adjourned to 28.7.2012 for filing written statement. When the appellant had failed to file written statement, cost was imposed upon them and their defence was struck off finally on 18.2.2013 and thereafter another advocate appeared on behalf of the applicant and the original suit was decreed on 18.7.2016 but the application under order 9 rule 13 CPC was preferred on 21.2.2017 but same was dismissed *vide* impugned order being not maintainable on the ground of delay in preferring the application. Now again the present appeal has been preferred against impugned order with delay of 115 days, though the present representative of the appellant/applicant was authorised to look after the proceedings which shows that appellant is dealing with the present matter in very casual manner and has taken the process of the court for a ride. The appellant/applicant had failed to explain the delay of each and

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every day. The act and conduct of the present applicant/appellant in delaying the proceedings of the present case amounts to abuse of process of law. The applicant had failed to explain the adequate and sufficient cause, which prevented it from approaching the court within time but here the conduct of present applicant/appellant is found to be glaringly negligent without any justified ground. There is lack of bonafide diligence at the part of the applicant. Thus, he does not deserve concession of condonation of delay.”

7. As already noticed, ordinarily, the Court condones the delay in filing the appeals or revisions in order to decide the cases on merits, rather than on defaults. However, the Court cannot overlook the conduct of the petitioners. At every stage, an effort has been made by the petitioners to buy time. Moreover, the execution of the decree has already been satisfied.
8. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.
9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 09, 2024
“DK”

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