

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

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**CR-5560-2019 (O&M)
Date of decision: 01.03.2024**

NISHAN SINGH**..Petitioner****Versus****STATE OF PUNJAB AND ORS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. S.S. Majithia, Advocate
for the petitioner.

Mr. Kanav Singla, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this revision petition assailing the correctness of the order passed by the First Appellate Court refusing to condone the delay of 180 days in filing the first appeal. The petitioner filed a civil suit for grant of decree of declaration to the effect that the uncommunicated order 22.02.2012, passed by the Commissioner of Police, which was upheld by the departmental authorities, is illegal, null and void. The services of the petitioner were dispensed with by the order dated 22.02.2012. The suit filed by the plaintiff was dismissed on 04.05.2016. He applied for the certified copy of judgment and decree on the same date, and the aforesaid copies were prepared on 23.05.2016, but his counsel collected the copies on 30.05.2016. Thereafter, the Courts were on a break due to summer vacations. After collecting the certified copies of the judgment and decree and case file from the previous counsel, he handed over the file along with the relevant papers in the end of June, 2016 to clerk of an advocate, practising in Sub-Divisional Court, Faridkot, and on the advice of the clerk,

he while visiting the office of the Commissioner of Police handed over a copy of the judgment and decree in the Commissioner's office. He also received communication from the office of the Registrar on 28.10.2016, requiring him to deposit Rs.500/-. During this period, his wife also suffered a brain injury and she remained in 'coma' and hence she was hospitalized. On 18.11.2016, he got the appeal drafted, however, due to demonetization, he was not able to arrange the new currency notes. Ultimately, the appeal was filed on 25.11.2016. The First Appellate Court identified the following issues while deciding the application for condonation of delay:-

- “1. Whether the delay in filing the appeal was not intentionally? OPA*
- 2. Whether there are sufficient grounds for condonation of delay in filing the appeal? OPA*
- 3. Whether the application is not maintainable in the present form? OPR*
- 4. Relief.”*

2. Ultimately, the First Appellate Court refused to condone the delay on the ground that the appellant was not vigilant and has failed to furnish sufficient explanation for delay of 180 days.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. While considering the application for condonation of delay in filing the first appeal, the approach of the Court should be pragmatic. Explanation for each day of delay is not mandated by law. The petitioner has produced medical record to prove that his wife remained hospitalized in K.D. Hospital, Amritsar, due to brain injury. The First Appellate Court has also overlooked the fact that the petitioner was out of service. In these circumstances, the First Appellate Court was required to be more indulgent

towards the petitioner. The right of filing a first appeal is an important statutory right available to the party for getting the facts and evidence reappreciated apart from the law points. The right conferred by a statute should not be defeated on mere technicality unless the Court comes to a conclusion that the default on the part of the appellant cannot be condoned. The rules of procedure are handmaids of justice. The rules shall be applied for adequate dispensation of justice. The rules shall not be interpreted in a narrow manner because it would defy the ends of justice.

5. Keeping in view the aforesaid discussion, the impugned order passed by the First Appellate Court is set aside. The first appeal filed by the petitioner is restored to its original number while directing the First Appellate Court to dispose of the same expeditiously and in accordance with law.

6. The parties through their learned counsel are directed to appear before the First Appellate Court on 22.03.2024.

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

March 01st, 2024

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(ANIL KSHETARPAL)
JUDGE

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