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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6370-2024
Date of decision: 07.11.2024

Archana Saini and another

...Petitioners

Versus

Tarsem Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Dinesh Nagar, Advocate for the petitioners.

Mr. Parminder Singh Kanwar, Advocate for respondent No.1.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 10.09.2024 passed by the First Appellate Court vide which an application bearing No.CM-207-2023 titled as “Archana Saini & Another Vs. Tarsem Lal and another” filed under Section 5 of the Limitation Act for condonation of delay in filing the first appeal has been dismissed.

2. On 04.11.2024, this Court had passed the following order:-

“Present: Mr.Dinesh Nagar, Advocate for the petitioners.

Learned counsel for the petitioners has submitted that for the delay and loss caused to respondent no.1, the petitioners are ready to compensate respondent no.1 with costs



/ damages.

Notice of motion for 07.11.2024.

Liberty is granted to the petitioners to serve respondent no.1 through dasti process as well as through the counsel appearing before the Executing Court.

To be shown in the urgent list.

The petitioners have undertaken to bring a demand draft of Rs.50,000/- in the name of respondent no.1 on the next date of hearing.

It is made clear that in case the said demand draft is not brought on the next date of hearing, the present petition would be liable to be dismissed.”

3. In pursuance of the said order, learned counsel for the petitioners has brought a demand draft amounting to Rs.50,000/- prepared in the name of respondent No.1 and has handed over the same to learned counsel for respondent No.1, who has affirmed the said fact and has submitted that he would hand over the same to respondent No.1.

4. Learned counsel for the petitioners has submitted that in the present case, an appeal against the judgment and decree dated 27.10.2022, along with an application for condonation of delay was filed on 03.07.2023. It is submitted that the delay in filing the appeal had occasioned on account of the fact that petitioner No.1, who was pursuing the said case, was confined to bed as she had undergone a knee surgery in which there were post operational complications and that her counsel never informed her about the decision in the said suit, in spite of petitioner No.1 having made all efforts to contact the said counsel and it was only after the summer vacation, that on 01.07.2023 the petitioners learnt about the passing of the judgment and



decree dated 27.10.2022 and immediately thereafter, they filed the said appeal. It is submitted that one of the primary reasons mentioned in the impugned order, while rejecting the application of the petitioners for condonation of delay, was that there was no medical evidence annexed along with the application. Learned counsel for the petitioners has referred to the medical record (Annexure P-4) which has been annexed with the present petition in support of his arguments that petitioner No.1 had undergone knee surgery. It is further submitted that it is a matter of settled proposition that endeavour should be made by all the Courts to decide the case on merits instead of technicalities and has prayed that the impugned order be set aside and the first appeal of the petitioners be decided on merits. It is also submitted that the petitioners undertake not to take any adjournments before the First Appellate Court and would fully assist the First Appellate Court in expeditious disposal of the said appeal.

5. Learned counsel appearing on behalf of respondent No.1 has submitted that the matter has already been delayed on account of the act and conduct of the petitioners and thus, in case, the matter is to be remanded to the First Appellate Court for a decision on merits, the petitioners should undertake to argue the appeal on the date as directed by the First Appellate Court and should not take any adjournment before the First Appellate Court and should not make any further efforts to delay the matter.

6. A perusal of the medical record annexed along with the present revision petition as Annexure P-4 would show that the plea raised by the petitioners for explaining the delay in filing the first appeal before the First Appellate Court, stands substantiated. Moreover, the petitioners have duly

compensated respondent No.1 by paying an amount of Rs.50,000/- to respondent No.1 for the delay caused. Keeping in view the abovesaid facts and circumstances and also the law laid down by the Hon'ble Supreme Court in case titled as **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** reported as **(1987) 2 Supreme Court Cases 107**, the present revision petition is partly allowed and the impugned order dated 10.09.2024 is set aside and the First Appellate Court is directed to decide the appeal bearing CA No.210 of 2023 on merits, as expeditiously as possible. As undertaken by learned counsel for the petitioners, learned counsel for the petitioners appearing before the First Appellate Court would not take any adjournment and counsel for all the parties would fully assist the Court in disposing of the appeal, as expeditiously as possible.

07.11.2024
Pawan

(VIKAS BAHL)
JUDGE

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