

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.376

Case No. : C. R. No. 7476 of 2023

Date of Decision : April 02, 2024

Sharmistha Chaudhary

.... Petitioner

vs.

Ashish Madan and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Manish Jain, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate
for respondents no.1 and 2.

Mr. Gurjeet Singh Saini, Advocate
for Mr. Charanjit Singh Bakshi, Advocate
for respondent no. 3.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 23.11.2023 (Annexure P-1), passed by learned District Judge, Gurugram, whereby application filed by the petitioner, for condonation of delay of 49 days in filing the appeal, has been dismissed.

2. Brief facts of the case, necessary for proper adjudication of the revision petition in hand, are that the respondents/plaintiffs filed suit for eviction, possession, recovery of arrears of rent and mesne profits against the petitioner etc. Vide judgment dated 07.07.2022, the suit of the respondents/plaintiffs was decreed. The petitioner/defendant no.2 preferred

appeal against the aforesaid decree dated 07.07.2022. The appeal was accompanied by an application for condonation of delay of 49 days in filing the appeal, which has been dismissed by the learned District Judge, Gurugram, vide impugned order dated 23.11.2023. It was the contention of the petitioner in the aforesaid application that she could not visit her lawyer as she was suffering from viral fever and due to medical emergency being faced by her relative (Bhabhi). It was only on 25.09.2023 that her counsel advised her to prefer appeal and thereafter, the counsel consumed some time to prepare the appeal. So, there is delay of 49 days in filing the appeal.

3. Heard.

4. In case **S. Ganesharaju (D) LRs. and another vs. Narasamma (D) Thr. LRs. and others – 2013(11) SCC 341**, the Hon'ble Apex Court has held that unless the respondents are able to show the mala fide in not approaching the Court within period of limitation, generally as a normal rule, delay should be condoned. The relevant extract of the said judgment reads as under :-

“15. The expression "sufficient cause" as appearing in [Section 5](#) of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

16. Unless respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

17. Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.

19. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily.”

5. In case **Improvement Trust, Ludhiana vs. Ujagr Singh and others** – **Law Finder Doc Id # 216419**, it is decided by Hon’ble Apex Court that attempt should be made to allow the matter to be contested on merit rather than disposing it of on technicalities at the threshold.

6. Since the petitioner was not to gain anything by delaying the filing of appeal, so, the impugned order, whereby application filed by the petitioner for condonation of delay in filing the appeal has been dismissed, deserves to be set aside.

5.

In view of the above, the present petition is allowed and the impugned order dated 23.11.2023 (Annexure P-1), passed by the learned District Judge, Gurugram, is set aside and delay of 49 days in filing the appeal by the petitioner before the Court below is hereby condoned.
6.

The parties are directed to appear before the Court below on 27.05.2024, which shall proceed further in accordance with law.
7.

The present revision petition stands allowed in the above terms.
8.

Pending applications, if any, shall stand disposed of along with this judgment.

April 02, 2024

(GURBIR SINGH)

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JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.