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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(124)

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Date of decision: - 27.01.2025

Balraj Singh

....Petitioner

Versus

Gurcharan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Arun Bansal, Advocate,
for the petitioner. (Through VC).

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India read with Section 115 CPC for setting aside the impugned order dated 03.12.2024 (Annexure P-6).
2. Learned counsel for the petitioner has submitted that in the application for condonation of delay, no valid reason has been given for condoning the delay yet without there being any valid reason, the impugned order dated 03.12.2024 has been passed vide which the delay has been condoned. It is further submitted that the present suit was filed in the year 2012 and was decided after a period of 10 years and thus, the petitioner has been harassed since 2012 and Damocles' Sword is still hanging over the head of the petitioner. It is submitted that in view of the same, the impugned order be set aside and the application filed by



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respondent No.1 for condonation of delay be dismissed.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned order has been rightly passed and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. It is a matter of settled law that every endeavour should be made by the Courts to decide the case on merits instead of technicalities. In the said regard, reference can be made to the judgment of the Honb'le 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 relevant portion of which is as under: -

"xxx xxx xxx And such a liberal approach is adopted on principle as it is realized that:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately,*



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or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

5. In the present case, it would be relevant to note that respondents No.1, 4 and 5 had filed a suit for declaration, joint possession and permanent injunction with respect to suit land measuring 120 kanal 6 marlas and were claiming shares in the same. The said suit was dismissed vide judgment and decree dated 05.01.2023 (Annexure P-1). The appeal against the said judgment was filed on 27.07.2023 and alongwith the said appeal, an application for condonation of delay was also filed on 27.07.2023 (Annexure P-4). In the said application, it was specifically averred that the plaintiff-Gurcharan Singh son of Karnail Singh had been residing abroad and had not come to India since 2013 and that Surjit Kaur, who is the wife of Gurcharan Singh and the attorney of said Gurcharan Singh, had come to India in May, 2023 and thereafter, had obtained the jamabandi of the suit land and it had then transpired that the defendants had got entered some mutation of transfer on the basis of the judgment and decree dated 31.01.2023 passed in some other suit against which an appeal had already been preferred. It was further averred that further enquiries were made and it had then transpired that the present suit



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had also been decided vide judgment and decree dated 05.01.2023 and thereafter, she had obtained the certified copy of the same and the appeal was filed without any further delay. The 1st Appellate Court vide order dated 03.12.2024 had observed that there was a reasonable explanation for the delay of 174 days and that it is a well settled principle of law that when justice is at stake, technical or pedantic approach should not be adopted and a reference was made to the judgment of the Hon'ble Supreme Court in case titled as “**Dhiraj Singh Vs. State of Haryana**”, (2014) 14 SCC 127.

6. This Courts find that the reasons given in the delay application to the effect that respondent No.1-plaintiff was residing abroad since 2013 and even his wife, who was the power of attorney holder, had only come back to India in May, 2023 and subsequently after making enquiries had learnt about the passing of the present judgment and decree dated 05.01.2023, is sufficient explanation for the Court to have condoned the delay. Moreover, a perusal of the memo of parties would show that Gurcharan Singh-plaintiff was 66 years old in the year 2012 and presently, would be more than 76 years of age and even his wife Surjit Kaur is stated to be 76 years as per the application (Annexure P-4) and further a perusal of the judgment and decree dated 05.01.2023 would also show that substantial rights with respect to the suit land measuring 120 kanals 6 marlas are involved and thus, the appeal filed before the Appellate Court should be decided on merits and not on technicalities. It is a matter of settled law that when substantial justice and technical

considerations are pitted against each other, the cause for substantial justice deserves to be preferred. Moreover, by condoning the delay, the 1st Appellate Court has followed the said principle of law and this Court while exercising its power under Article 227 of the Constitution of India, finds no ground to interfere in the impugned order dated 03.12.2024 (Annexure P-6).

7. Keeping in view the above-said facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

January 27, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes