

RSA-9771-2018(O&M) 1

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

RSA-9771-2018 (O&M)
Date of Decision : 21.01.2025

Manish Kumar

..... Appellant

Versus

Janki Ji College of Education and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Arun Sharma, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

CM-18958-C-2018

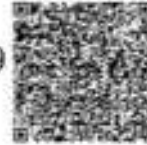
Application for exempting the applicant-appellant from filing certified copies of the impugned judgments and decree dated 29.04.2014 and 14.05.2018, is allowed as prayed for, subject to all just exceptions and the same are taken on record.

C.M.No.18959-C-2018

Prayer in the present application filed under Section 5 of the Limitation Act, is for condonation of delay of 25 days in filing the accompanying appeal.

Heard.

For the reasons, mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 25 days in



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filing the accompanying appeal is condoned.

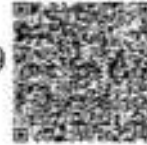
RSA-9771-2018

This is plaintiff's second appeal against the judgment and decree dated 14.05.2018 passed by the Court of learned Addl. District Judge, Yamuna Nagar at Jagadhri, dismissing the appeal against the judgment and decree dated 29.04.2014, passed by the Court of learned Civil Judge (Senior Division), Sub Division, Bilaspur (Yamuna Nagar) vide which the suit for mandatory injunction filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff filed a suit for mandatory injunction directing the defendants to give admission to the plaintiff in D.Ed. Second Year course for the Session 2010-2011; to permit him to attend classes, take examinations to be held in June, 2011 and also to declare his result thereafter.

4. The plaintiff had taken admission in D.Ed. two years course in Janki Ji College of Education (defendant No.1) in the academic Session 2009-2010. He cleared the first year D.Ed. course by securing 80% marks in June, 2010. As per the case of the plaintiff, admission for the Second Year of D.Ed. course was to be taken in August, 2010. However, as the mother of the plaintiff was suffering from severe ailments on account of heart surgery which had taken place at Delhi in 2009, the plaintiff could not attend his classes. He had been attending to his ailing mother as a result of which he could not take admission in the Second Year of D.Ed. course. The plaintiff approached defendant No.1 in 3rd week of September, 2010 to seek admission but admission was refused and a sum of Rs.18,000/- on account of absence



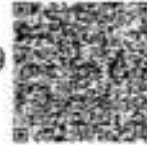
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and late fee was demanded. In the last week of November, 2011, the plaintiff was told that his name had been removed from the rolls. The plaintiff then approached defendant No.2 but was told that no such information was received. The plaintiff again approached defendant No.1 but was simply turned off.

5. The suit was resisted by the defendants. The basic stand taken was that after having passed the First year examination of D.Ed. course, the second year session had started in August, 2010 but the plaintiff remained absent. He was telephonically informed and a communication dated 20.09.2010 was also issued. On 01.11.2010, again a communication was issued calling upon the plaintiff to attend his classes and in case of failure to do so, his admission would be cancelled. Examination form for the second year of D.Ed. course was to be sent in November, 2010 on account of which a communication dated 23.11.2010 was issued to the Kurukshetra University informing about the absence of the plaintiff and that his admission had been cancelled. Reliance was placed upon the rules as per which 85% attendance which after condonation came to 75% was required, to be eligible to appear in the examination. Demand of late fee etc. was denied.

6. From the pleadings of the parties, the following issue were framed:-

1. *Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP*
2. *Whether suit of the plaintiff is not maintainable ? OPD*
3. *Whether the plaintiff has no locus standi to file the present suit ? OPD*
4. *Whether the plaintiff has no cause of action to file the*



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present suit ? OPD

5. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD*

6. *Whether suit is bad for non joinder and mis-joinder of necessary parties ?*

7. *Whether the plaintiff has not come to the court with clean hands ? OPD*

8. *Relief.*

7. Parties led their respective evidence.

8. The trial Court dismissed the suit filed by the plaintiff and the appeal filed against the said decision was also dismissed, leading to the filing of the present regular second appeal.

9. I have heard learned counsel for the appellant.

10. Learned counsel for the appellant has submitted that the plaintiff could not seek admission and attend classes in the second year of D.Ed. course on account of ill health of his mother but the said fact was not considered by the defendants. Learned counsel has referred to the judgments passed by the Courts below and has submitted that the same are not sustainable.

11. I have considered the submissions made by learned counsel for the plaintiff but find the same to be devoid of merit.

12. Admittedly, the plaintiff sought admission in the Ist Year of D.Ed. Course for the Session 2009-2010. He cleared the first year examination in 2010 after which he was to seek admission in the Second Year Course in August, 2010. He, however, failed to do so. No classes were attended. The ground that the mother of the plaintiff having fallen ill was not

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proved because no evidence worth its name was led to prove the same. The communications referred to by the plaintiff were also not placed on record. In fact, he did not lead any evidence worth its name to prove the case set up by him.

13. On the contrary, the defendants led ample oral and documentary evidence to prove that the plaintiff had not approached them for admission and no communication had been issued. They were also able to prove that the defendants had issued communications (Ex.D1 to Ex.D4) to the plaintiff and to the University, calling upon the plaintiff to attend classes, failing which admission would be cancelled. In fact, communication dated 11.11.2010 (Ex.D1) was duly received by the plaintiff as was admitted by him in the cross-examination while appearing as PW1. This communication clearly stated that the name of the plaintiff would be struck off from the attendance register if within two days, he failed to appear and deposit the requisite fee. The suit was instituted on 23.12.2010 after more than a month from the issuance of the said communication Ex.D1.

14. The defendants were also able to prove that in terms of the guidelines Ex.D5, 85% of the total attendance was required to appear in the examination and a maximum of 5% could be condoned by the head of the institution and 5% could be condoned in cases of extreme illness or exceptional circumstances, by the Director Secondary Education, Haryana. Meaning thereby, that where attendance was less than 75%, a student would not be eligible to appear in the examination. The defendants were, therefore, successful in proving that the plaintiff had no case. I do not find any illegality in the findings of facts recorded by both the Courts below,



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warranting interference in second appeal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

21.01.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No