



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

RSA-9780-2018 (O&M)

Date of decision: 22.07.2025

Smt. Shashi Devi

...Appellant(s)

Vs.

Birender and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Preeti Singh, Advocate for the appellant.

NIDHI GUPTA, J.

CM-18970-C-2018

Prayer in this application filed under Section 151 CPC is for condonation of delay of 975 days in refiling the accompanying appeal.

2. Heard.

3. The only ground cited in the application for seeking condonation of extraordinary delay of 975 days in refiling the appeal is that 'the file of the case was misplaced'. However, no details are forthcoming as to on what date file was misplaced or on what date it was recovered.

4. The said reason cited in the application is vague and general. The same does not constitute sufficient ground for condonation of extraordinary and inordinate delay of 975 days.

5. It is well-settled proposition of law that each day's delay has to be explained in a mathematical manner which has not been done by the applicant-appellants. No cogent reason or plausible explanation has



been furnished by the applicant-appellant for condonation of such an inordinate and unexplained delay in refiling of the main appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

6. The Law of Limitation is enacted with a purpose, as a handmaid of Justice and cannot be ignored/reduced to an ineffective piece of paper by giving it the complete go-by. It is the bounden duty of every litigant to pursue his case diligently; and it is also the bounden duty this Court to ensure that justice inures to both parties concerned.

7. More so, the Hon'ble Supreme Court in ***Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA), Law Finder Doc Id # 2542600***, has recently held as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*



- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.” (Emphasis added)

8. The above Application, accordingly, stands **dismissed**.

CM-18971-C-2018

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 09 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is **allowed** and delay of 09 days in filing the accompanying appeal is condoned.

RSA-9780-2018 (O&M)

The Defendant No.1 is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit for partition and mandatory injunction filed by the plaintiff/respondent No.1 herein, has been partly decreed by both the Courts below.



2. At the very outset, it may be pointed out that although the present appeal is of the year 2018, notice has not yet been issued in the same. Since 2018, the matter has been adjourned either at request of learned counsel for the appellant; or due to non-appearance of learned counsel for the appellant.

3. Even on merits, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below as it has been concurrently found by both the learned Courts below that the plaintiff was entitled to a decree for partition on the basis of Jamabandi Ex.P9, which established that the parties to the suit are co-sharers of the suit property. The plaintiff had duly proved that he had purchased share in the suit property to the extent of 31/152 vide Sale Deed Ex.DW6/A. Ex.DW6/A shows that defendant No.1 had purchased to the extent of 27/152 in the suit property. From Ex.DW3/1, it was established that defendant No.5 was also a co-sharer. As such, names of the parties were reflected as co-sharers in Jamabandi Ex.P9. Moreover, there was nothing on record to show that property stood partitioned between the parties. Accordingly, learned trial Court vide judgment and decree dated 05.03.2012 had partly decreed the suit in favour of the plaintiff separating his share of 31/152. However, relief of mandatory injunction was denied as the plaintiff had admitted in his cross-examination that he had seen construction of other shops prior to partition being affected and at that time, no objection was raised by him. Further, Defendant No. 1 was not found to be owner of the entire front as the original owner namely Nanga



had only 27/152 share of land in dispute and, therefore, he could not have passed on title in respect of more than his share. The site plan Ex.P3 also shows the remaining area of the suit land bearing killa No. 20/2 with filled up foundation; and the site plan Ex.P4 is showing open land behind the shop; site plan Ex.DW7/B is also showing as vacant land as joint property in existence of shops of other co-sharers. Thus, suit land was joint in nature and was not partitioned by metes and bounds. There is no evidence to indicate that the suit land was being used for agricultural purposes. The appeal filed by the defendant No.1 was also dismissed with costs vide judgment and decree dated 07.08.2015. Jurisdiction of the Civil Court is also made out.

- 4. In view of the above, I find no ground is made out to interfere in the concurrent findings of learned Courts below.
- 5. The present Regular Second Appeal is hereby **dismissed** on merits; as well as on ground of delay.
- 6. Pending applications, if any, stand disposed of.

22.07.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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