



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-3946-2025(O&M)
Date of decision : 10.02.2026

Surinder Pal alias Chinda
... Petitioner

Versus

Kuldeep Kaur
... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vaibhav Sehgal, Advocate
for the petitioner.

Mr.Dinesh Ghai, Advocate and
Ms.Amrita Arora, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 02.05.2025 (Annexure P-5) passed by the Civil Judge (Jr.Div.), Ludhiana, vide which the application under Section 5 of the Limitation Act filed by the petitioner for condoning the delay in filing the restoration application has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that the respondent had filed a suit for specific performance of agreement to sell on 29.08.1998 with respect to an alleged agreement to sell dated 28.05.1996. It



is submitted that the petitioner was in jail from 30.04.1996 till 20.09.1996 in case FIR no.42 dated 28.04.1996 under Section 18, 16, 85 of the NDPS Act, Police Station Phillaur and was released on 20.09.1996 and thus could not have executed agreement to sell dated 28.05.1996 and has referred to certificate dated 28.05.1999 which has been annexed as Annexure P-6. It is argued that the said suit was decreed ex-parte vide judgment dated 02.02.2008 and the petitioner filed an application under Order 9 Rule 13 CPC read with Section 151 CPC when he came to know about the said ex-parte judgment and decree. It is further submitted that the petitioner was appearing in the said proceedings on every date, but since on 01.01.2020 he fell sick and was confined to bed, he could not appear on 10.01.2020. It is submitted that the trial Court vide order dated 10.01.2020 had dismissed the case of the petitioner in default and the petitioner, after having fully recovered, filed an application for restoration on 04.03.2020. It is submitted that in the said process, the delay of 25 days occurred with respect to which an application under Section 5 of the Limitation Act for condonation of delay in filing restoration application was filed.

3. It is further argued that the medical certificate showing that the petitioner was suffering from Enteric fever with jaundice since 01.01.2020 and was advised complete bed rest, was affixed along with the said application. It is submitted that instead of allowing the said application and restoring the case, the trial Court by taking a hyper technical view had dismissed the application vide impugned order dated 02.05.2025. It is



submitted that although the medical certificate has been considered but the trial Court had, primarily on the ground that the petitioner in the application had stated that he was confined to bed till 30.10.2020, dismissed the said application. It is submitted that apparently the date 30.10.2020 is a typing error, inasmuch as, the medical certificate clearly shows that the petitioner was confined to bed till dated 30.01.2020 and since the application was filed on 04.03.2020, thus, the question of petitioner being ill till 30.10.2020 does not arise. It is further submitted that in the said circumstances, the application should have been allowed and the application of the petitioner under Order 9 Rule 13 CPC be restored.

ARGUMENTS ON BEHALF OF THE RESPONDENT

4. Learned counsel for the respondent, on the other hand, has submitted that the respondent has an exparte judgment and decree in her favour and the petitioner had filed an application under Order 9 Rule 13 CPC which also was not followed up by the petitioner and on 10.01.2020, the petitioner or his counsel did not appear and thus, the said application was dismissed in default vide order dated 10.01.2020. It is submitted that the application for restoration was not filed within the prescribed period and even the averments made in the application to the effect that he was confined to bed till 30.10.2020 was apparently a wrong averment. Learned counsel for the respondent has further referred to the order dated 07.07.2025 passed by this Court to highlight the fact that at least the respondent should be paid litigation expenses to the extent of Rs.20,000/-.



ARGUMENTS ON BEHALF OF THE PETITIONER IN REBUTTAL

5. Learned counsel for the petitioner has submitted that the respondent is in possession of the suit property and thus, the delay in the proceedings would primarily prejudice the petitioner. Learned counsel for the petitioner has very fairly submitted that the petitioner is ready to pay Rs.20,000/- to the respondent as litigation expenses.

ANALYSIS AND FINDINGS

6. This Court has heard learned counsel for the parties and has perused the paper book.

7. It is not in dispute that the petitioner had filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 02.02.2008. It is the case of the petitioner that the petitioner has a good case on merits with respect to the main suit. It is further his case that he has been appearing in the proceedings under Order 9 Rule 13 CPC on each and every date and could not appear on 10.01.2020 on account of being seriously ill from 01.01.2020. On 10.01.2020, the application under Order 9 Rule 13 CPC filed by the petitioner was dismissed in default. The petitioner had moved an application for restoration of the said application under Order 9 Rule 13 CPC read with Section 151 CPC on 04.03.2020 and thus, there was a delay of 25 days in filing the said application regarding which specific application under Section 5 of the Limitation Act was also filed.

8. It is not in dispute that the petitioner had produced medical

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certificate from K. Deep Nursing Home dated 30.01.2020 in which it was specifically mentioned that the petitioner was an old patient of Hypertension and Diabetes and had a history of heart ailments and was suffering from Enteric fever with jaundice since 01.01.2020 and was under treatment of Dr.J.S. Kathuria, who had issued the medical certificate, as an O.P.D. patient since 01.01.2020 and was advised complete bed rest till 30.01.2020. Although the period was specifically mentioned in the said medical certificate, however, apparently on account of typing error in the application dated 04.03.2020, it was stated that the petitioner was ill from 01.01.2020 till 30.10.2020. The fact that mentioning of the date 30.10.2020 was a typing error was apparent from the fact that the application had been filed on 04.03.2020 and thus, the question of the petitioner being ill till 30.10.2020 does not arise. The trial Court vide impugned order dated 02.05.2025 however, primarily on the basis of the said typing error, had observed that the averments made in the application were contrary to the medical certificate and had thus not condoned the delay of 25 days in filing the application for restoration and had dismissed the application for restoration of the application under Order 9 Rule 13 CPC. The said view taken by the trial Court was a hyper technical view. The delay had been duly explained and was duly supported by the medical certificate.

9. The Hon'ble Supreme Court of India in the case of ***Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others*** reported as ***1987 AIR Supreme Court 1353*** had observed as under:-

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“And such a liberal approach is adopted on principle as it is realised 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, 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

10. It should be the endeavor of every Court to decide cases on merits than on technicalities. Additionally, it would be relevant to mention that it is not disputed that it is the respondent who is in possession of the suit property and thus, delay in the proceedings would primarily prejudice the petitioner. The petitioner has further brought a demand draft of Rs.20,000/- in the name of the respondent, as was undertaken on behalf of the petitioner on 07.07.2025, which demand draft is handed over to learned counsel for the respondent, who has reaffirmed the said fact.



11. Keeping in view the above said facts and circumstances, the present revision petition is allowed and the impugned order dated 02.05.2025 is set aside and the application filed by the petitioner for condonation of delay along with application for restoration of the application under Order 9 Rule 13 CPC read with Section 151 CPC are allowed and the application under Order 9 Rule 13 CPC read with Section 151 is restored to its original number and the trial Court is directed to decide the same on merits after hearing both the parties concerned. The present revision petition is allowed subject to costs of Rs.20,000/- which have already been paid by the petitioner to the respondent by way of demand draft in the name of the respondent.

12. It is however clarified that this Court has not opined on the merits of the case and the application under Order 9 Rule 13 CPC and all other proceedings would be decided independent of the observations made in the present order after hearing both the parties in accordance with law.

(VIKAS BAHL)
JUDGE

February 10, 2026.
Davinder Kumar

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