

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****234****RSA-470-2018 (O&M)****Date of decision: 27.04.2026****Ludhiana Improvement Trust Ludhiana****...Appellant(s)****Vs.****Gurdeep Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Kavita Arora, Advocate
for the appellant.

Mr. Yogesh Goel, Advocate and
Mr. Vishal, Advocate
for the respondents.

NIDHI GUPTA, J.**CM-1185-C-2018**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 74 days in refiling the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly
supported by an affidavit of learned counsel for the applicant/appellant,
the same is allowed and delay of 74 days in refiling the accompanying
appeal is condoned.

CM-1186-C-2018

Prayer in this application filed under Section 5 of the Limitation
Act is for condonation of delay of 1463 days in filing accompanying appeal.



2. Ld. counsel for the applicant/appellant *inter alia* submits that delay of 1463 days in filing the present appeal has occurred on account of the reasons as given in paras 3 and 4 of the present application, which read as under: -

“3. That now the plaintiff/respondent no. 1 came to deposit the price of the increased area of 49.45 sq. yards @ Rs. 250 PSY, the appellant Trust found that the calculation of value of the increased area was in violation of the Rule 7 (4) of the Punjab Town Improvement (Utilization of Land and Allotment of Plots) (Amendment) Rules, 2016, which provided that the price of the increased area shall be double the market value or double the last auction price in any scheme in such area whichever is higher.

4. That in view of the above, on getting an opinion from its counsel, the Trust has decided to file the present appeal against the judgment & decree dated 30.10.2012 passed by ADJ, Ludhiana.”

3. It is submitted that, therefore, for the above reasons, delay of 1463 days has been occasioned.

4. *Per contra*, learned counsel for respondent No.1/plaintiff vehemently opposes submissions advanced on behalf of the applicant/appellant and submits that suit of the plaintiff was duly decreed by learned Trial Court. Against the same, no Civil Appeal was filed by the present appellant/defendant No.3. It is submitted that the present Appeal has been filed by defendant No.3 only against the judgment of learned First Appellate Court. Judgment of learned Trial Court was never challenged by



the present appellant. Furthermore, no cogent reasons have been given for condoning such extraordinary delay.

5. Heard.

6. I find merit in the above contentions of Id. counsel for plaintiff.

7. It is cardinal principle of law that delay of each day has to be explained. In this regard, reference may be made to a recent judgment of the Hon'ble Supreme Court in **Civil Appeal No. 11794 of 2025** titled as **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666**, wherein it is held that each day's delay has to be explained in a mathematical manner which has not been done by the applicant-appellant. No cogent reason or plausible explanation has been furnished by the applicant for condonation of such an inordinate and unexplained delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

8. In recent years, the Hon'ble Supreme Court has come down heavily on the malaise of lackadaisical litigants. The Apex Court has also taken due note of the fact that over a period of time, rights of parties get crystallised. Reference is made to recent judgment of Hon'ble Supreme Court in **Union of India v. Jahangir Byramji Jeejeebhoy (SC) : Law Finder Doc Id # 2537649, decided on 03.04.2024**, the relevant para of which are as under:-



“26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the ‘Sword of Damocles’ hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants

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35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they



were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.”

(Emphasis added)

9. Again, in **Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA)**, Law Finder Doc Id # 2542600, the Hon’ble Supreme Court 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)

10. As such, no ground is made out for condoning inordinate delay of 1463 days. Present application accordingly stands **dismissed**.

RSA-470-2018 (O&M)

Brief facts of the case are that the plaintiff/respondent No.1 had filed instant Civil Suit seeking decree of Specific performance of the Agreement of Sale dated 8.8.1996 executed by the defendant No.2 in favour of the plaintiff to sell the suit plot measuring 200 sq.yds. as described in the plaint; **and** decree for permanent injunction. It was pleaded that defendant No.3 was originally the owner in possession of 129-acre Scheme. Defendant No.3/appellant had floated 129-acre Scheme where the suit plot is situated. Vide Memo No. 8934 dated 24.09.1982, said plot was allotted to defendant No.1-Shashibala by the appellant on instalment basis. Upon deposit of the entire consideration amount, defendant No.1 had received possession of the said plot from defendant No.3. Consequentially, defendant No.1 became owner in possession of the said plot. Vide Vasika No.7748 dated 27.02.1992, defendant No.1 had appointed defendant No.2 as her Attorney to do all acts on behalf of defendant No.1. Vide Agreement to Sell dated 08.08.1996, defendant No.2 being GPA of defendant No.1, had sold the said plot to the plaintiff for total sale consideration of Rs.50,000/- and received full consideration



from the plaintiff. Thus, plaintiff was bona fide purchaser of the suit plot. Defendants No.1 and 2 had also agreed to get done all the formalities from the office of defendant No.3 to ensure transfer of the suit plot in the name of the plaintiff. However, as they failed to get the documents completed, plaintiff had approached defendant No.1 in March 1999 but she began to demand money and threatened to alienate. Hence, present suit was filed on 22.05.1999.

2. Upon notice, defendant No.1 had appeared and filed written statement and resisting the suit and taking various formal pleas as well as pleas on merits. Defendant No. 2 did not appear despite notice and was proceeded against exparte vide order dated 12.06.1999.

3. The appellant that is the Defendant No.3 appeared and filed written statement to the effect that no notice u/s 98 of the Punjab Town Improvement Act was issued before filing this suit. Moreover, the matter is interse between the plaintiff and other defendants and no cause of action arose against defendant no.3. The suit is bad for mis-joinder of necessary party. The defendant no.3 has been wrongly arrayed in this suit, and the name of the defendant no.3 should be deleted from the plaint. On merits defendant no.3 alleged that it is admitted that the defendant no.1 was allotted of the suit plot. It was denied that plaintiff visited the office of defendant no.3 for transfer of this plot in his name. It was further alleged that the suit plot was allotted to Shashibala (defendant no.1) by the Trust by draw on 5.6.82. The intimation was sent to her vide memo no. 8934 of 24.9.82. As per terms and conditions of the allotment allottee



was required to deposit full consideration of the plot or by instalment with interest 10% per annum. As per record, allottee has deposited full sale consideration of the plot which is subject to Audit Certificate. The allottee is required to complete other formalities. Thereafter, the sale deed is to be executed in favour of allottee under rules. The answering defendant no.3 has to execute the sale deed in favour of allottee. It was further submitted that the area of the plot has been increased from 200 to 249.45 sq.yards reported by the Engineering Branch. As per terms and conditions of the allotment the increased area has to run with the plot as per the Govt. Policy. However, the plaintiff is required to pay the sale money of increased area of plot and complete the formalities. It was further contented that no cause of action has arisen against defendant no.3 and therefore, the suit is liable to be dismissed with costs.

4. Upon appraisal of the pleadings and the evidence led by the parties, the Civil Judge (Junior Division), Ludhiana had decreed the suit of the plaintiff vide judgment and decree dated 29.05.2009 as follows:-

“26. In view of my findings on the issues mentioned above, the suit of the plaintiff is decreed with costs and the plaintiff is granted the relief of Specific Performance of the Agreement to Sell dated 08-08-1996 as the relief of permanent injunction restraining the defendants from causing any kind of interference in possession of plaintiff. Further, since the defendant no.1 has been left with no interest in the suit plot, plaintiff shall be under obligation to deposit the price of the increased area of the suit plot by calculating the same as per the allotment price, directly to the defendant no.3 and the defendant no.3 will get the paper



formalities completed from the plaintiff including the transfer of the suit plot in his name under rules. The expenses of transfer deed or registration of sale deed etc. shall be borne by the plaintiff. The suit is decreed against the defendants, but the plaintiff is entitled to recover the costs from defendants no. 1 and 2 only. The decree sheet be prepared accordingly and the file after being completed, paged and indexed be consigned to the record room.”

5. Against the same, defendant No.1 Shashibala had filed a Civil Appeal dated 22.09.2009. Vide impugned judgment and decree dated 30.10.2012, Additional District Judge, Ludhiana had dismissed the said Appeal. Now, the present second appeal has been filed by defendant No.3.

6. It is *inter alia* submitted by learned counsel for the appellant that plot No. 138-C measuring 200 sq.yds. situated in 129-acre Scheme had been allotted to defendant No.1 by draw of lots dated 05.06.1982 at allotment price of Rs.250 per sq.yds. Defendant No.1 through GPA defendant No.2 had agreed to sell the suit plot to the plaintiff vide Agreement to Sell dated 08.08.1996. However, since they failed to execute Sale Deed, present suit came to be filed seeking specific performance of the Agreement to Sell dated 08.08.1996. Suit of the plaintiff was decreed by the learned Civil Court vide judgment and decree dated 29.05.2009.

7. Learned counsel contends that the Judgment & decree of the Id. Courts below so far as these direct the appellant Improvement Trust Ludhiana to accept from the plaintiff/respondent No. 1, the price of the



Additional 49.45 Sq. yards area of plot at the rate of original allotment i.e. @ 250 Per Sq. yard is illegal, arbitrary; and in violation of the amended provision of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983.

8. It is submitted by learned counsel for the appellant that the Ld. Courts below could not have directed the Trust to transfer the additional area in favour of the plaintiff/respondent at the rates fixed by the Trust at the time of draw of lots on 05.06.1982. It is contended that said impugned direction of the learned District Courts is contrary to the amended provisions of The Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983, as amended vide notification dated 28.06.2016. It is submitted that as per Rule 7(4), it is stipulated as follows:-

“(4) In case the area of a plot is found more than the size of allotted plot, due to some technical error in measurements or otherwise, and the excess area,

(i) is lesser than the size of an independent plot, matching the size of the plot or of any other size, so carved out in Scheme in such area; or

(ii) it cannot be used as a plot of some other size in such area or;

(iii) it cannot be used for any other purpose, it may be allotted to the person with whose plot such excess area adjoins, at a price, which shall be double the market value or double the last auction price, in any Scheme, in such area, whichever is higher.”



9. From the reading of the Rule 7 (4) of the rules reproduced above, in case the area of the plot is found more than size of the allotted plot due to some technical error in measurements, or otherwise and the excess area is lesser than the size of independent plot and it cannot be used as a plot or for any other purpose, it may be allotted to the person with whose plot such excess area adjoins, at a price which shall be double the market value or double the last auction price, in any scheme in such area whichever is higher. Since the excess area adjoins the plot allotted to Smt. Shashi Bala. Now in view of the decree in favour of the plaintiff/respondent no. 1, thus as per rules the Trust is under legal obligation to charge from the plaintiff/ respondent no. 1 the price of the excess area at a rate which has to be double the present market value of the plot. The judgment & decree passed by the Ld. Courts below permitting the plaintiff/respondent no. 1 to deposit and directing the appellant Trust to accept the price of the additional area at a rate equal to the allotment price of the plot, is illegal and arbitrary. The judgment & decree passed by the Ld. Court below liable to be set aside and be modified to the extent that the additional area of 49.45 Sq. yard which is yet to be allotted by the trust and possession is yet to be delivered, be allotted to the plaintiff/respondent no. 1 at double the market price, prevalent at the time of allotment of the excess area.

10. Learned counsel for the appellant further submits that because the Trust had issued the allotment letter in favour of Smt. Shashi Bala (respondent no. 2), the original allottee at a rate of Rs. 250 per square yards fixed by the Trust before taking out the draw of lots on 05.06.1982 and now



in view of the judgment & decree passed by the Id. Courts below, the allotment of additional area of 49.45 sq yards is to be made in favour of the plaintiff/respondent no. 1. In view of Rule 7 (4) of the 1983 Rules reproduced above, the plaintiff/respondent no. 1 is liable to pay the price of the additional area measuring 49.45 sq yard at the price equal to double the existing market area. The judgment & decree passed by the Id. Courts below directing the Trust to accept the price of the additional area at the original allotment price which was fixed by the Trust at the time of taking out draw of lots on 05.06.1982, is illegal and arbitrary and are liable to be set-aside.

11. It is accordingly prayed that the present appeal be accepted and the judgment & decree passed by Ld. Courts below may kindly be set-aside to the extent that directions issued by the Id. Courts below permitting the plaintiff/respondent to deposit and directing the appellant Trust to accept the price of the excess area of plot measuring 49.45 Sq. Yards in favour of the plaintiff/respondent no. 1 at the rate fixed by the Trust at the time of taking out draw of lots on 05.06.1982, in the interest of justice.

12. *Per contra*, learned counsel for the respondent No.1/plaintiff vehemently opposes submissions advanced on behalf of the appellant and submits that against the learned Trial Court judgment, appellant had not preferred any Civil Appeal before the learned Additional District Judge. The Trial Court had given a categoric direction to the appellant, which was not challenged. He accordingly prays for dismissal of the present Appeal.



13. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

14. It is undisputed fact on record that learned Civil Judge had decreed suit of the plaintiff with the clear cut direction that the *".....plaintiff shall be under obligation to deposit the price of the increased area of the suit plot by calculating the same as per the allotment price, directly to the defendant no.3 and the defendant no.3 will get the paper formalities completed from the plaintiff including the transfer of the suit plot in his name under rules. The expenses of transfer deed or registration of sale deed etc. shall be borne by the plaintiff."* No challenge was made by the appellant/defendant No.3 to the aforesaid direction of the learned Trial Court. The said direction had therefore attained finality. Civil Appeal filed by defendant No.1 had been dismissed by learned Additional District Judge as per judgment dated 30.10.2012. As such, present Second Appeal by the defendant no.3, without first taking recourse to Civil Appeal before the learned Additional District Judge, is not maintainable.

15. In support, I rely upon judgment passed by Hon'ble Supreme Court in **Chokalingaswami Idol v. Gnanapragasam (SC), decided on 1303.2008 : Law Finder Doc Id # 145335**. The relevant para of the said judgment is as under:-

"4. The only issue raised by the learned senior counsel for the appellant is that in view of the findings of the trial court with regard to the ownership of the land against the defendant No. 1 i.e. the State Government, no appeal had been filed by the



State Government and an appeal had been prepared by only one of the private co defendants who was allegedly a lessee of the land in question and in the light of this situation it was not permissible for the first and second appellate courts to hold in favour of the State Government and against the plaintiff-appellant. We find merit in this plea. In paragraph 16 of the judgment that we have quoted above, the High Court was cognizant of the fact that it was perhaps over stepping its jurisdiction in the matter but chose to circumvent the requirement of law in the belief that it was justified in doing so as the plaintiff-appellant was attempting to swallow Government property. We are of the opinion, however, that the State Government had accepted the judgment of the trial court as no appeal had been filed by it. We accordingly allow the appeal, set aside the judgments of the first appellate court and the High Court dated 21st November 1988 and 10th January 2001 respectively and restore the judgment of the trial court. There will be no order as costs."

16. I further rely upon a judgment passed by Madhya Pradesh High Court in **Chainsingh v. Chitriya Bhilala, (Madhya Pradesh) (Indore Bench)**, decided on 20.08.2018: Law Finder Doc Id # 1143587; wherein it is held as under:-

"A. Civil Procedure Code, 1908 Order 41 Rule 33 - Second appeal challenging findings of trial court - Held, if findings of trial court have attained finality due to absence of appeal, a second appeal cannot be entertained directly against such findings. The appellate court is restricted in granting relief to parties who have not challenged initial findings."

The relevant para of the said judgment is as under:-



*"11. The defendant did not prefer any appeal against the aforesaid finding of the trial Court rejecting their counter claim, therefore, the said finding has attained finality. Once the defendants did not prefer the first appeal, they cannot prefer second appeal directly against such finding as held by the apex Court in the case of **Chokalingaswami Idol v. Gnanapragasam (Dead by L.Rs. : (2008) 4 SCC 219**; and Madras High Court in the case of **Perumal v. Gurunathan : AIR 1996 Madras 415**, in which, it was observed in Para 11 as under :*

"11. I have carefully considered the submissions of the learned counsel appearing on either side on this issue. There is no comparison of this case with the cases relied upon by the learned counsel for the appellant. As pointed out earlier, those decisions not only were rendered on the peculiar facts and circumstances of the case, but also to meet the contingencies visualised under Order 41, Rule 33, CPC, enabling the appellate Court concerned to adjust the rights of the parties and even alter the portion of the decree not appealed against, in giving effective relief in the appeal. On the other hand, so far as the second defendant -- appellant before this Court is concerned, as pointed out earlier, he did not project any claim of his own and he only adopted the written statement filed by the first defendant as per which the first defendant was claiming rights even against the interest of the second defendant contending that the plaintiffs as well as the second defendant have joined together and executed a sale deed in favour of the first defendant and that the said deed was a real one. As far as the document Ex. B-3 is concerned, the claim of the first defendant was that the third defendant, wife of the second defendant had no rights. It is such a person



who has adopted the written statement of the first defendant with such contentions, has chosen now to file this appeal. That apart, the rights claimed by the first defendant himself is distinct and separate from the rights of the second defendant or third defendant and there is no identity of claims or any common or joint decree or claim in this case. The second defendant who suffered a decree before the trial Court, as also the third defendant by their omission to file any appeal before the first appellate Court must be considered to have abandoned their right to file an appeal against the decree in so far as it went against them before the trial Court and cannot, therefore, be allowed to file an appeal in this Court by way of second appeal under the pretext of challenging the judgment and decree of the first appellate Court before which also the present appellant was not an appellant, by merely taking advantage of the fact that he was one of the respondents. Permitting such an appeal at the instance of the second defendant will amount to permitting appeal directly to be allowed to be filed against the judgment and decree of the trial Court by a person who has not chosen to challenge the judgment of the trial Court before the first appellate Court. It is all the more so and there could be no such permission having regard to the fact that the parties who have filed the first appeal, as noticed earlier, have reconciled to their fate and allowed the matter to become final and have not chosen to further pursue the matter by filing any second appeal. For all the reasons stated above, I do not find any merit whatsoever in the plea on behalf of the learned counsel for the appellant in his attempt to justify the filing of this second appeal at

the instance of the second defendant. The second appeal is, therefore, liable to be and is rejected in this ground alone."

17. Even further, Appellant/defendant No. 3 has filed the instant Appeal while placing reliance upon Rule 7(4) of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983, which have been amended vide Notification dated 28.06.2016. No provision thereof has been shown by the appellant to this Court that the said Rules shall have retrospective application. For this reason, as well, it cannot be said that the plaintiff is required to pay double market value or double the last auction price as required under Rule 7(4).
18. Learned counsel for the appellant is unable to controvert or dispute the above said facts, findings, and legal position.
19. In view of the discussion above, the present Regular Second Appeal is hereby **dismissed** on merits, as well as on ground of delay.
20. Pending applications, if any, stand disposed of.

27.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No