

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

CR-2189-2021 (O&M)

Date of decision: 01.10.2021

Mahander Singh (deceased) through LRs and others

...Petitioners

Versus

Sarwan Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Jain, Advocate,
for the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the order dated 02.09.2021 passed by learned Additional District Judge, Rewari vide which application seeking condonation of delay of about 240 days in filing the first appeal against the judgment and decree dated 18.03.2017, has been allowed.

2. I have heard learned counsel for the petitioners and gone through the case file. Relevant of the order impugned herein is as below:-

“7. The impugned judgment and decree were passed on 18.03.2017 and the present appeal came to be filed on 17.10.2017. The limitation for filing the appeal was 30 days, therefore, in my considered view there is a delay of about six months (183 days) in filing the appeal. The appellants-applicants have pleaded that due to communication gap between them and their counsel the delay was occasioned. It is further pleaded that the applicants were told by their counsels that they need not appear in person in civil suit on every date, hence, they did not contact their counsel. No doubt, the delay in filing the appeal is not of small period.

8. However, in the present case by virtue of judgment and decree learned lower court has set aside the registered sale deed dated 20.01.2012 in the name of the appellants-applicants

considering that, it is hard to believe that the applicants would sit over their right without even approaching the First Appellate Court. In **Collector Land Acquisition Vs. Mst. Katiji and others- AIR 1987 SC 1353** Hon'ble Supreme Court has held that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. It is further held that "every day's delay must be explained" does not mean that a pedantic approach should be made. Further, there is no presumption that delay is occasioned deliberately. Also held 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.

9. In **Rudaram&Ors. Vs. Saroj Devi &Ors. (supra)** Hon'ble Supreme Court held that delay of 176 days cannot be said to be an inordinate delay, more so when the matter relates to first appeal. It was further observed and held that appellants having lost before trial Court ought to have fair and reasonable opportunity to pursue First Appeal. In **Rashda Vs. State of Punjab and Another (supra)** Hon'ble High court of Punjab and Haryana has condoned the delay of 1299 days in filing review petition holding the want of necessary intimation from counsel as justified ground."

3. Valid reasons have been recorded by the Court while allowing the application seeking condonation of delay filed by the respondents. No material irregularity in law or procedure has been committed by the court below so as to exercise extraordinary revisional jurisdiction. Therefore, no interference is called for in the impugned order dated 02.09.2019 passed by the Learned Additional District Judge, Rewari.

4. Instant petition is dismissed.

01.10.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No