

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

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RSA-3115-2025 (O&M)**Date of decision: 08.09.2025****Rajender Kaur****...Appellant(s)****Vs.****Smt. Shakuntla Devi and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.D.Yadav, Advocate for the appellant.

NIDHI GUPTA, J.**CM-11126-C-2025**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 760 days in filing the accompanying appeal.

2. The only reason cited by counsel for the applicant/appellant in the application seeking condonation of delay of 760 days is *"That the delay in filing in appeal is occurred due to the fact that appellant/plaintiff handed over all the documents and fees etc. to the Id. Trial Court Counsel in order to file appeal in this Hon'ble Court against the judgment and decree dated 23.10.2018 passed by Id. Addl. Civil Judge (Sr. Divn.), Rewari and judgment and decree dated 05.05.2023 passed by Id. Addl. District Judge, Rewari and Id. Trial court counsel informed the appellant/applicant that he has engaged Sh.Sarabjit Singh Khurana Advocate in Hon'ble High court to file appeal and he has filed the appeal and your appeal is going*



on and when the other party filed execution petition in the Id. Executing Court, then the applicant asked her trial court Counsel as well as to Sh. Sarabjit Singh Khurana, Advocate, then only came to know that no appeal was filed by the above said counsel in this Hon'ble High court against the judgments and decrees passed by Id. Courts below and due to this reason, delay of 760 days occurred."

3. The above said reason is vague and does not constitute sufficient ground for condonation of extraordinary and inordinate delay of 760 days.

4. Hence, the present application is dismissed.

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Present second appeal has ben filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for possession by way of ejection of the defendants/respondents herein, from the suit property, has been dismissed with costs by both the Courts below.

2. Brief facts of the case as stated by the appellant in the plaint are that the plaintiff is a resident of khasra No./property No. 249, near Railway Power House Indira Colony, Rewari measuring 272.5 sq.yds. (suit property), which was allotted to her by Haryana Wakf Board, Ambala Cantt as tenant vide lease order No. 24 dated 27.06.2014 and rent was fixed @ Rs.600/-p.m. for 3 years. It was fixed that rent will be enhanced upto 15% after 3 years. Plaintiff has paid Rs.6,600/- as rent from 01.12.2013 to 31.10.2014. Plaintiff had also paid security application fee



of Rs.30,000/-. It was alleged that, yet the defendants had forcibly occupied as trespasser in the portion shown in red colour in the site plan of the suit property. Despite request, defendants had refused to vacate the same. Hence, the present suit was filed on 20.11.2014.

3. Upon notice, defendants had appeared and filed written statement by *inter alia* denying that the plaintiff was resident of khasra No./property No. 249. It was stated that father of the defendant No.1 Sh. Parbhati Lal was in peaceful possession over the suit property since 09.10.1994 till his death; whereafter his legal heirs are in peaceful possession of suit property without any interruption. It was averred that lease order No.24 dated 27.06.2014 had been fraudulently obtained by the plaintiff by misrepresenting facts. It was pointed out that plaintiff had nowhere pleaded in the plaint as to how and when the defendants occupied the alleged portion. It was alleged that in fact the plaintiff and her husband were living in abandoned quarters of Indian Railway from where they were evicted in 2012. At that stage, plaintiff and her husband requested the defendants to provide a room for some days while they searched a house on rent. In this background, defendants had permitted the plaintiff and her husband to live in the suit premises. However, the plaintiff and her husband did not vacate the aforesaid room intentionally and malafidely, despite several request by the defendants. The electricity connection No. CDS-1412 was got installed by DHBVNL in the name of deceased Parbhati Lal in the suit property since long. The suit property was continuing in the name of the deceased Parbhati Lal in the house tax



assessment record of Municipal Council Rewari. Previously, husband of the plaintiff, namely Pardeep Kumar had filed a Civil Suit No. 656/2012 titled as **Pardeep Kumar vs. Smt. Shakuntala Devi and others** before the learned Civil Judge (Senior Division), Rewari which was dismissed as withdrawn on 17.09.2014. The said litigation had been deliberately and intentionally concealed by the plaintiff with an oblique motive. Accordingly, dismissal of the suit was prayed for.

4. Defendant No.1 had also filed counter claim reiterating the above facts and further stated that the plaintiff and her husband had no right, title or interest in the aforesaid house bearing house tax No. 889/A/725. It was accordingly stated that defendant/counter claimant is entitled to restrain the plaintiff and her husband from interfering in the peaceful possession over the remaining portion of the aforesaid house shown in green colour in the site plan; and further defendants were also entitled to restrain the plaintiff and her husband from changing the nature of the aforesaid house. Hence, counter claim was filed.

5. Plaintiff had filed reply to counter claim stating therein that the suit is filed to get eviction of the defendants from the leased property as per law. The lease Deed is in favour of the plaintiff with specific number and details. The electricity connection mentioned by the defendants, was got disconnected long ago. The use and occupation of the suit property by the defendants was therefore, legal and without process of law. Accordingly, eviction was sought. Further, averments made in the plaint



were reiterated. Accordingly, dismissal of the counter claim was prayed for.

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

“1) Whether the plaintiff is entitled for a decree of possession by way of ejectment of the defendant from the red portion marked by BEFG shown in the site plan as prayed for? OPP

2) Whether the present suit is not maintainable in the present form? OPD

3) Whether the plaintiff has no cause of action to file the present suit? OPD

4) Whether the plaintiff has concealed the true and material facts from the Court? OPD

5) Relief.”

7. Upon appraisal of the pleadings, oral and documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Rewari had dismissed the suit of the plaintiff with costs vide judgment and decree dated 23.10.2018. The Civil Appeal filed by the plaintiff was also dismissed with costs by learned Additional District Judge, Rewari vide judgment and decree dated 05.05.2023. Hence, the present Second Appeal by the plaintiff.

8. Learned counsel for the appellant/plaintiff *inter alia* submits that learned Courts below have wrongly drawn a conclusion that the plaintiff could not prove encroachment made by the defendants. It is submitted that the Courts below failed to consider that the plaintiff is residing for the last more than 20 years as a tenant and she has paid rent



of Rs.200/-p.m. on the basis of lease order dated 27.06.2014 executed by the Haryana Wakf Board. In para 11 of the present Grounds of Appeal, it is averred that the real owner of the disputed property was not impleaded as a party by the defendants.

9. It is further submitted by learned counsel for the appellant that the Id. Courts below totally failed to consider that no issue regarding the counter claim was framed by the Id. Trial Court. Therefore, findings on the counter claim filed by the defendants/respondents are not sustainable in the eyes of law and therefore, both the judgments and decrees passed by Id. Courts below are liable to be set aside.

10. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. Courts below be set aside.

11. No other argument is raised on behalf of the appellant/plaintiff. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.

12. Learned Trial Court has dismissed the suit of the plaintiff with costs with the following directions: -

“A decree for possession of the suit property shown in red colour in the site plan Ex.DW1/1 directing the plaintiff to hand over the vacant possession of the same to the defendant No. 1/counter claimant within a period of two months from the date of this judgment, is passed in favour of the defendant No. 1/ counter claimant and against the plaintiff.



Further a decree for permanent injunction restraining the plaintiff from interfering in the peaceful possession of the counter claimant/ defendant No. 1 qua the suit property or from changing the nature of the suit property, is passed in favour of the defendant No. 1/ counter claimant and against the plaintiff."

13. It has been concurrently found by both the Courts below that plaintiff had failed to prove alleged lease order dated 27.06.2014 by virtue of which she claimed allotment of suit property. On the contrary, defendant No.1 had placed on record electricity bills Ex.DW3/5 to Ex.DW3/99 to show that the suit property was having electricity connection in the name of his father Parbhathi Lal. Plaintiff failed to rebut the evidence of the defendants that Parbhathi Lal, father of defendant no.1 was in possession of the suit property since the year 1994. Plaintiff was also unable to produce any document to show that she was in possession of the suit property. In fact, in her cross-examination, plaintiff had admitted that the site plan of the defendants is correct and has further admitted that the defendants are in possession of entire suit property except the portion shown in the red colour claimed by the defendants to be in illegal occupation of the plaintiff. Plaintiff had also admitted that the name of Parbhathi Lal, father of defendant No.1 was continuing in the records of Municipal Corporation. It is also admitted by learned counsel for the plaintiff before this Court that earlier Civil Suit filed by husband of the plaintiff against defendants for permanent injunction on 01.12.2012 was dismissed as withdrawn on 17.09.2014.



14. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

15. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

16. Pending applications, if any, stand disposed of.

08.09.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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