



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.5792 of 2022

Reserved on: 27.03.2025

Pronounced on :18.06.2025

**Rajinder and others**

**...Petitioners**

**VS**

**Mandir Shri Durga Ji (IDOL) and others**

**...Respondents**

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Argued by: Mr. Sanjay Kaushal, Sr. Advocate  
with Mr. Vijay Pal, Advocate  
for the petitioners.

Mr. A.K.Kansal, Advocate  
for respondent No.1.

None for respondents No.2 to 14.

\*\*\*\*

**VIKRAM AGGARWAL, J**

The petitioners who were defendants No.3, 9 and 16 in a suit for possession filed by the respondent-plaintiff (Mandir Shri Durga Ji (Idol)) have preferred the instant revision petition assailing the order dated 16.11.2022 (Annexure P-9) passed by the Court of Additional District Judge, Jind, vide which the application preferred by the petitioners under Section 5 of the Limitation Act, 1963 for condonation of delay of 131 days in filing the appeal against judgment and decree dated 23.05.2016 (Annexure P-3) was dismissed.

2. A suit for possession (Annexure P-1) was instituted by the respondent-plaintiff against 16 defendants, 03 out of which are the present petitioners. Possession of agricultural land measuring 71 Kanals 19 Marlas (fully described in the plaint) situated in the revenue estate of village Intal Kalan, Tehsil and District Jind, was sought along with *mesne* profits from July 2008 to June 2011 and future *mesne* profits @ ₹30,000/- per acre per

annum from the date of filing of the suit till the date of recovery along with interest at the rate of 18% per annum.

3. The defendants initially put in appearance and filed their written statement. Defendants No. 1 to 11 and 16 submitted written statement (Annexure P-2), whereas defendants No.12 and 13 submitted their separate written statement. However, thereafter, the defendants did not put in appearance as a result of which they were proceeded against *ex parte*. Subsequently, the defendants appeared again but thereafter, again did not appear, as a result of which they were again proceeded against *ex parte*. The suit was decreed *ex parte* vide judgment and decree dated 23.05.2016 (Annexure P-3) by the Court of Civil Judge (Jr. Division), Jind. An appeal was preferred by the present petitioners (Annexure P-4). The appeal was accompanied by an application under Section 5 of the Limitation Act (Annexure P-5) which was opposed by way of reply (Annexure P-6). By way of the impugned order dated 16.11.2022 (Annexure P-9), the said application for condonation of delay was dismissed leading to the filing of the present revision petition.

4. Learned counsel for the parties were heard.

5. Sh. Sanjay Kaushal, learned Senior Counsel representing the petitioners strenuously urged that the impugned order is not sustainable. It was submitted that the delay was not such which should have led the Court to non-suit the petitioners on the ground of delay itself. He further submitted that matters should be decided on merits and should not be rejected on mere technicalities. Learned Senior Counsel, while referring to the sequence of events, submitted that after having being proceeded *ex parte* initially, the petitioners had put in appearance and the case had been adjourned to

12.01.2016. However, the matter was taken up on 11.01.2016 and the petitioners were proceeded against *ex parte* again. Learned Senior Counsel submitted that under the circumstances, the petitioners never came to know that they had been proceeded against *ex parte* and that eventually, the *ex parte* judgment and decree had been passed. It was submitted that the petitioners came to know about the judgment and decree having been passed only when summons as regards the execution proceedings were received by them. Learned Senior Counsel submitted that in view of the settled law on the subject, the impugned order is not sustainable. In support of his contentions, reliance was placed upon a judgment of the Supreme Court of India in the case of **Inder Singh Vs. The State of Madhya Pradesh, 2025 Live Law (SC) 339.**

6. *Per contra*, Sh. A. K. Kansal, learned counsel representing respondent No.1 (plaintiff) submitted that there is no illegality in the impugned order. He submitted that the only attempt of the petitioners, from the very beginning, was to delay the proceedings which they were successful in doing. After the passing of the *ex parte* judgment and decree, certain defendants preferred a petition under Order 9 Rule 13 of the Code of Civil Procedure (for short 'CPC') which too was dismissed whereas the present petitioners filed an appeal along with an application for condonation of delay. Learned counsel submitted that the defendants were trying their luck on both sides and were delaying proceedings in the execution by initiating different actions. Learned counsel submitted that there was no explanation for the delay of 131 days in filing the appeal as a result of which the application was rightly dismissed. Learned counsel submitted that the arrears of *mesne* profits are outstanding even today and not even a single penny has

been paid. In support of his contentions, learned counsel placed reliance upon a judgment of the Division Bench of this Court in the case of ***Suresh Kumar Vs. Daryai, 1996 (2) CCC 646***, judgments of Coordinate Benches of this Court in the case of ***Lachman Dass Vs. Food Corporation of India, 2007 (3) RCR (Civil) 340***, ***Jagdeep Kaur Vs. Manohar Singh, 2012 (166) PLR 743***, a judgment of the Supreme Court of India in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649***, and another judgment of a Division Bench of this Court in the case of ***Union of India and others Vs. Ram Chander and another (2022) LawSuit (P&H) 2664***.

7. I have considered the submissions made by learned counsel for the parties and have perused the record.

8. Section 5 of the Limitation Act provides for extension of the prescribed period in certain cases. It states that any appeal or application, other than an application under any of the provisions of Order XXI CPC may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. It is a settled position of law that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for, the Courts are not supposed to legalize injustice but are obliged to remove the same. It is also well settled that gross negligence or deliberate delay also cannot be overlooked. Lack of *bona fides* is a significant and a relevant fact. A division Bench of this Court dealt with a similar issue in the case of ***Union of India Vs. Ram Chander and another (supra)***. While relying upon the judgment of the Supreme Court of India in the case of ***Esha***

*Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (supra)*, wherein broad principles have been culled out, the Division Bench added some more guidelines taking note of the present case scenario;

*“11. In Esha Bhattacharjee Vs. managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649, the following principles were laid down:*

*15. From the aforesaid authorities the principles that can broadly be culled out are:*

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining factsituation.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation. xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario.*

*They are: -*

a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard*

*manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

*b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

*d) The increasing tendency to perceive delay as a nonserious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”*

9. Reverting to the facts of the present case, the suit for possession was instituted on 08.08.2011. Notice was issued to the defendants for 27.09.2011. Most of the defendants put in appearance on the said date i.e., on 27.09.2011. Immediately, an application under Order 7 Rule 11 CPC was instituted on 24.11.2011. Thereafter, the defendants started filing written statements also. Since defendants No.14 and 15 had expired, the matter remained pending for issuance of summons to their legal representatives. When service was completed in May 2014, the application for rejection of plaint came up for consideration and arguments were not addressed on the same till March 2015. The said application was rejected as not being maintainable vide order dated 04.03.2015. After that written statement of defendants No.1 to 11 and 16 was filed on 06.04.2015. Issues were framed on 01.05.2015 and the matter was posted for evidence of the plaintiff. PW-1 kept on appearing but was not cross-examined on a number of dates. On

21.11.2015, Sh. O.P. Bansal, counsel representing defendants No.1 to 11 and 16 pleaded no instructions as a result of which Court notice was ordered to be issued to the defendants. Ultimately, some of the defendants again appeared on 17.12.2015 and then again they did not appear. Other defendants did not appear despite service and were again proceeded against *ex parte* on 02.01.2016. The case was adjourned to 12.01.2016 but was somehow taken up on 11.01.2016. On 11.01.2016, defendants No.3, 4, 7 and 16 were proceeded against *ex parte* and the matter was adjourned to 12.01.2016. It is therefore clear that even on 12.01.2016, the matter was taken up. If the defendants had noted the date as 12.01.2016, they could have appeared on 12.01.2016 but they did not. Ultimately, evidence of the plaintiff was closed on 03.03.2016 and the matter was posted for evidence of the defendants. Evidence of the defendants was closed by order on 21.03.2016 and ultimately after the matter remained pending for rebuttal evidence, the suit was decreed on 23.05.2016.

10. The aforesaid chronology of events clearly unveils the intention of the defendants which was simply to delay the matter. Such strategy is not uncommon, especially in suits for specific performance, suits for recovery, suits for possession etc., and even eviction proceedings initiated under the Rent Laws. The defendants in this case successfully misused and abused the provisions of law to their advantage and to the disadvantage of a helpless and hapless plaintiff.

11. Further, one set of defendants is stated to have instituted proceedings under Order 9 Rule 13 CPC in which they failed. The present petitioners instituted an appeal along with an application for condonation of delay of 131 days in filing the appeal. In the application, the sole ground

taken was that while the case was fixed for 12.01.2016, it was taken up on 11.01.2016 and they were proceeded against *ex parte*. They never divulged in the application that after 11.01.2016, the case was taken up on 12.01.2016 also and on many other dates after that. Further, no explanation was given for non-appearance on any date after 11.01.2016. The version that they came to know about the judgment and decree on 17.10.2016 only when they received the summons in the execution is totally unbelievable and unacceptable. The ground raised for condonation of delay was, therefore, totally frivolous and not at all depicted any sufficient cause for the delay in filing the appeal. Since the delay was also substantial (131 days), the application was rightly dismissed by the Appellate Court. Since the application for condonation of delay had been dismissed, there was no occasion for the Appellate court to deal with the application for additional evidence.

12. The judgment in the case of *Inder Singh Vs. The State of Madhya Pradesh (supra)* would not come to the aid of the petitioners in view of the peculiar facts and circumstances. In the said case, the Supreme Court of India reiterated the settled principle of law that though delay cannot be condoned without sufficient cause, a major aspect which has to be kept in mind is that if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation. There is no quarrel with the said proposition but as noticed above, the judgment would not be applicable on account of the peculiar facts and circumstances noticed in the preceding paragraphs coupled with the conduct of the petitioners and their ill-intention of delaying proceedings and still further, not paying even a penny towards *mesne* profits till date.

13. Keeping in view the totality of the facts and circumstances of the case coupled with the law on the subject and further the conduct of the petitioners, this Court finds no reason to interfere in the impugned order.

Accordingly, the present revision petition is found to be devoid of merit and the same is hereby dismissed.

Pending application(s), if any, shall also stand disposed of.

**(VIKRAM AGGARWAL)**  
**JUDGE**

**Pronounced on: 18.06.2025**

Rekha

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