



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

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**SAO-37-2022 (O&M)
Date of decision: 01.04.2025**

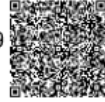
RAJINDER KAUR**..Appellant****Versus****LACHHMAN SINGH AND ANR.****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Sukhbir Singh Tiwana, Advocate
for the appellant.

Mr. Raj Kumar, Advocate
Mr. Duni Chand, Advocate
for respondent No.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. The First Appellate Court has refused to condone the delay of more than 9 months in filing the first appeal. The appellant impugns the same.
2. The plaintiffs filed a suit for possession by way of specific performance of the agreement to sell dated 11.09.2013, which was contested by the defendant. After prolonged trial, the suit was decreed on 10.09.2018. The appellant was represented by Sh. S.S. Rathore, Advocate. She filed the first appeal while asserting that her children are residing abroad and she could not meet her counsel and her previous counsel did not disclose about the judgment and decree passed by the trial Court.
3. It has been found by the First Appellate Court that the appellant has failed to give any plausible justification for condoning the delay of more than 9 months. The appellant is resident of a Satellite Town of Chandigarh. Her children are already settled abroad. At the time of filing of first appeal,



she was only 49 years of age. She was represented by a counsel in the trial Court. Hence, she was required to be vigilant about the decision of the case. The period of more than 9 months is a pretty long time and the appellant cannot claim that she never came to know of the decision. The defendant is expected to regularly contact her counsel and enquire about the progress in the suit. Hence, the defendant cannot claim condonation of delay on the ground that her counsel did not inform about the decision. The delay is required to be explained satisfactorily.

4. The Supreme Court in *Pathapati Subba Reddy (Died) by LRs and others Vs. The Special Deputy Collector (LA), 2024 SCC Online (SC) 513*, has laid down the following tests before condoning the delay:-

“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.”

5. Keeping in view the aforesaid position, no ground to interfere with the impugned order passed by the First Appellate Court is made out.

6. Dismissed.

7. All the pending miscellaneous applications, if any, are also disposed of.

April 01st, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*