

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****282****CR-1311-2019 (O&M)
Reserved on : 12.05.2025
Pronounced on : 20.05.2025**

State Bank of India

....Petitioner

VERSUS

Dushyant Chandna and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Jain, Advocate for the petitioner.

ALKA SARIN, J.

1. Present revision petition has been filed challenging the order dated 16.07.2018 whereby the application filed by the petitioner herein for condonation of delay in filing the appeal has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for recovery of ₹1,65,436/- against the defendant-respondents. The suit was decreed vide judgment and decree dated 23.08.2011 holding as under :

“This suit is coming on this day for final disposal before me (Shashi Chauhan, Additional Civil Judge (S.D.), Panipat) in the presence of Shri A.K. Jain, counsel for the plaintiff and Shri Vinod Kumar for the defendants.

It is ordered that the suit of the plaintiff succeeds and the same is decreed with costs for recovery of ₹1,65,436/- alongwith interest at the rate of 12% per annum with

monthly rests from the date of filing of suit till realization. Both the defendants are severally and jointly liable to make the payment of decretal amount. If the defendants failed to repay the amount within a period of three months, the plaintiff bank is at liberty to recover the same by sale of mortgaged property.”

3. On 01.10.2011 the plaintiff-petitioner filed an application under Sections 151 and 152 of the Code of Civil Procedure, 1908 for correction of the judgment and decree dated 23.08.2011. It was stated in the application that while passing the judgment and decree, it has been held by the Trial Court that in case the amount was not paid within a period of three months, the plaintiff-petitioner would be at liberty to recover the same by way of sale of the mortgaged property. The said application was dismissed on 26.07.2016 holding that the correction sought was beyond the scope of Section 152 CPC and the only remedy was by filing an appeal. Thereafter, an appeal was preferred alongwith an application for condonation of delay of about 05 years in filing the appeal. The said application for condonation of delay in filing the appeal was dismissed vide impugned order dated 16.07.2018.

4. Learned counsel for the plaintiff-petitioner would contend that the equitable mortgage was a fraud and was so stated in para 11 of the plaint and therefore there could be no recovery from the said equitable mortgage as the property stood transferred in the name of the brother of defendant-respondent No.1 by virtue of a decree. It is further the contention of learned counsel for the petitioner that since the application was filed under Sections 151 and 152 CPC, therefore, the delay in filing the appeal occurred.

5. Heard.

6. In the present case, no *bonafide* reason is forthcoming for the condonation of a huge delay of five years in filing the appeal. An application was filed under Sections 151 and 152 CPC before the Trial Court for correction of the judgment and decree which, on the face of it, was not maintainable as what the plaintiff-petitioner was seeking was a review of the of the judgment and decree dated 23.08.2011 and not a clerical/typographical mistake. Learned counsel for the plaintiff-petitioner has not been able to convince this Court that there was anything which debarred the plaintiff-petitioner from preferring an appeal during the pendency of the application under Sections 151 and 152 CPC. It is trite that every day's delay has to be explained and in the present case any cogent explanation for the long delay of five years is woefully missing.

7. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.05.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO