

(2012) 01 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3197 of 2011

Jastej Singh Chhina

APPELLANT

Vs

Balwant Singh and others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 01 P&H CK 0136

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Jastej Singh Chhina defendant has filed this revision petition under Article 227 of the Constitution of India assailing order dated 24.01.2011 (Annexure P-1) passed by learned Additional District Judge, Mohali.

2. Suit filed by respondents/plaintiffs for ejectment of defendant-petitioner from the disputed premises and for recovery of arrears of rent and mesne profits has been decreed by the trial Court vide judgment and decree dated 15.02.2010 Annexure P-2. Defendant-petitioner preferred first appeal against judgment and decree of the trial Court. The said appeal was barred by limitation. Defendant-petitioner moved application for condonation of delay in filing the first appeal. Issues were framed on the said application and the first appeal was posted for 24.01.2011 for evidence of the applicant i.e. petitioner herein. However on that date, none appeared for the petitioner before the lower appellate Court and accordingly application for condonation of delay in filing the appeal was dismissed in default and the appeal was consequently dismissed as time barred vide impugned order dated 24.01.2011 Annexure P-1. The said order is under challenge in the instant revision petition.

3. I have heard learned counsel for the parties and perused the case file.

4. Learned counsel for the petitioner contended that his counsel could not appear

in the lower appellate Court nor informed the petitioner that the case was fixed for his evidence and therefore, non-appearance in the lower appellate Court was not intentional.

5. Learned counsel for the respondents on the other hand contended that the petitioner is intentionally delaying the disposal of first appeal because decree for recovery of rent and damages is to be executed against him.

6. I have carefully considered the matter.

7. Keeping in view all the circumstances and the liberal approach adopted by Courts in such matter, I am of the considered opinion that ends of justice would be met if the first appeal along with application for condonation of delay in filing the appeal is restored to the files of the lower appellate Court on payment of cost.

8. Revision petition is accordingly allowed. Impugned order Annexure P-1 passed by the lower appellate Court is set aside and first appeal along with application for condonation of delay in filing the first appeal is restored to the files of the lower appellate Court, subject to payment of Rs. 10,000/- as cost precedent.

9. Parties are directed to appear before the lower appellate Court on 10.02.2012.