

**(2004) 05 P&H CK 0101**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 799 of 1989**

Kirori Lal and Others

APPELLANT

Vs

Ramu and Others

RESPONDENT

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**Date of Decision :** 14-05-2004

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2004) 138 PLR 612 : (2004) 4 RCR(Civil) 661

**Hon'ble Judges :** Surya Kant, J

**Bench :** Single Bench

**Advocate :** Madan Dev, for the Appellant; C.M. Sharma, for the Respondent

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## Judgement

Surya Kant, J.—The petitioners herein filed a suit in representative capacity on behalf of all the co-owners of Pana Ahiran for declaration to the effect that they were owners-in-possession of agricultural land measuring 671 Kanals 10 Marias, fully described in para 1 of the plaint and, that the afore-mentioned land was erroneously mutated in favour of Gram Panchayat. The consequential relief of injunction to restrain the defendants from taking forcible possession of the suit land was also prayed for.

2. Learned Civil Court held that the previous decree dated 30.1.1980 restoring mutation in favour of the Gram Panchayat could not be set aside and thus impliedly held that the mutation in relation to ownership of the land was rightly sanctioned in favour of the Gram Panchayat. It, however, found that petitioners in possession of land and consequently passed a decree for permanent injunction restraining the defendants from dispossessing the plaintiffs (including ali the co-owners of Panna Ahiran) forcibly from the suit land except in due course of law.

3. Feeling partly aggrieved of the judgment and decree dated August 10, 1987 passed by the learned trial Court, the petitioners filed Civil Appeal No. 69/13 of 1987. This appeal, however, could not be filed within limitation prescribed in the Limitation Act, 1963. An application u/s 5 of the Act was, therefore, moved

seeking condonation of delay, which according to the petitioners as also found by the First Appellate Court, was of three days, namely, the appeal could be filed on or before 16.9.1987 but was actually filed on 19.9.1987. The petitioners attempted to explain the delay of three days, inter-alia, averring that Kirori Lal (Petitioner No. 1) was entrusted with the responsibility of filing the appeal but he suddenly fell ill on 19.9.1987 and recovered on 19.9.1987 and during this period he could not inform other petitioners, which caused the delay of three days in filing of the appeal. Kirori Lal (Petitioner No. 1) appeared as a witness in support of the averments made in the application for condonation of delay and also produced medical certificate. Exhibit A-1, to show that he fell ill and was advised bed rest from 14.9.1987 to 19.9.1987. The Learned First Appellate Court, however, did not accept this cause to be sufficient one for condoning the delay in filing of the appeal and refused to believe the Kirori Lal (Petitioner No. 1) regarding his illness or the medical advise to take bed rest. In support of his reasons to discard the afore-mentioned evidence, the learned First Appellate Court observed that it was quite unnatural for Kirori Lal (Petitioner No.1) to seek medical treatment from a private doctor when there is a government hospital in village Nahar which is about 2 Kilometers from the village of Kirori Lal. At the same time, it was also quite unnatural that Kirori Lal recovered on 19.9.1987 and returned from Rewari on that very day or could contact his counsel at Jhajjar to get the appeal drafted and file it on the very same day. The learned First Appellate Court, therefore, vide its judgment dated 20.1.1989 dismissed the application for condonation of delay and as a consequence thereof rejected the Appeal being time barred. Aggrieved by the aforementioned order, the petitioners have approached this Court.

4. I have heard Shri Madan Dev, learned counsel for the petitioners as well as Shri C.M. Sharma, learned counsel for the Gram Panchayat, and also perused the record.

5. It is not disputed by the learned counsel for the Gram Panchayat that the appeal could be filed on or before 16.9.1987 but the same was actually filed on 19.9.1987. Thus, there was a delay of three days in filing the appeal. It is true that a litigant cannot claim the condonation of delay as a matter of right, it is, however, equally true that instead of rejecting the claim on hyper-technicalities, there should be an effort by the Court to adjudicate the same on merits, while explaining the delay of three days, petitioner No. 1-Kirori Lal not only filed his affidavit in support of his plea that he fell ill from 14.9.1987 to 19.9. 1987, in his statement when he appeared as AW-2, he also explained the circumstances as to why the treatment was taken from a doctor at Rewari. His version to the effect that he initially got treatment at Kosli but having noticed no improvement, he was taken by his relatives to Rewari, has neither been questioned in the cross-examination nor discarded by the First Appellate Court. The version of Kirori Lal (Petitioner No.1) is quite natural and inspires confidence. The learned first Appellate Court ought to have kept in view that it was a suit filed in representative capacity on behalf of the co-owners, therefore, an attempt ought

to have been made to decide the same on merits instead of rejecting it at the threshold on the ground of bar of limitation.

6. For the reasons mentioned above, I accept this civil revision and set aside the impugned judgment dated January 20, 1989 passed by the learned Additional District Judge, Rohtak and condone the delay in filing Civil Appeal No. 69/13 of 1987 by the petitioners subject, however, to payment of costs of Rs. 5,000/- by them to the Gram Panchayat which the petitioners are directed to pay on the first date of their appearance before the first Appellate Court at Rohtak, which shall be fixed by it by giving a Court notice to the both the parties.

7. Since the dispute before the parties originated about 20 years back, I direct the first Appellate Court to decide the appeal within a period of three months from the date of receipt of a certified copy of this order.