

(1993) 08 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 130 of 1990

Shri Lakhbir Singh, Finger Prints Adviser	APPELLANT
Vs	
Mrs. Meena Sharma	RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 15.5
Limitation Act, 1963 — Section 5

Citation : (1993) 104 PLR 695 : (1993) 2 RCR(Rent) 681

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Satinder Khanna, for the Appellant; M.L. Merchea and M.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—This revision is directed against the order of the appellate authority, Ludhiana dated December 8, 1989 whereby it was held that the appeal preferred before it was within limitation.

2. Learned Rent Controller disposed of an ejectment petition by order dated May 27, 1989. The landlady aggrieved by the order passed by the Rent Controller, filed appeal on 27 1989 Along with the appeal, an application coupled with an affidavit was also filed for condonation of delay. The matter was considered and the order under revision, the appeal was held to be within limitation. This is what compelled the tenant-petitioner to file the present petition.

3. Learned counsel for the petitioner contended that the landlady applied for certified copy of the order on May 27, 1989. Copy was ready on June 13, 1989 and was actually delivered on the same date. Summer vacation in the subordinate courts commenced on June 16, 1989 and ended on July 15, 1989. Admittedly, the period of limitation for filing appeal against the order of the Rent Controller is 15 days If the appeal had been riled on July 16, 1989 the same would have been within limitation. Since the appeal was filed on July 27, 1989,

an application for condonation of delay, if any, was also filed along with the appeal. Learned counsel further stated that the entire approach of the appellate authority is erroneous in law and it could not be held that the appeal was within limitation. Learned counsel submitted that if the appeal had been filed on July 16, 1989, it would have certainly been within time, the period of limitation having expired during summer vacation. Since in the present case the appeal was filed on July 27, 1989, it was clearly barred by time.

4. After hearing the learned counsel for the parties, I find that there is merit in the contention of the learned counsel. The approach of the appellate authority that the appellant, landlady was not debarred from filing the appeal within 15 days after excluding summer vacation period is totally erroneous and therefore by the order under revision cannot be sustained in law. The respondent-landlady was entitled to file the appeal against the order of the learned Rent Controller within 15 days of the passing thereof. She could of course have the benefit of the period spent for obtaining certified copy of the order. If the period of limitation expired during summer vacation, the appeal could still be filed on the first opening day of the Courts. It can in no way be said that if the period of limitation expires during summer vacation, the appellate would have another 15 days after the close of vacation. The period of summer vacation cannot be legally excluded. In a case where an applicant seeks indulgence of the Courts for extension of the time u/s 5 of the Limitation Act, he will have to explain each day's delay. But it cannot be said that an applicant is entitled to file the appeal after excluding summer vacation period. To this extent, the approach of the learned appellate authority is contrary to law. As a consequence, it has to be held that the appeal filed before the appellate authority was barred by time by at least 11 days and, therefore, the impugned order cannot be sustained and has to be set aside.

5. In the result, the impugned order is set aside and the revision is allowed. The matter is remitted back to the learned appellate authority to consider to decide the application of the landlady for condonation of delay afresh in accordance with law. The parties through their counsel have been directed to appear before the appellate authority on September 14, 1993. No costs.