

**(2010) 10 P&H CK 0249**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 5510 of 2010

Chander Shekhar

APPELLANT

Vs

Baldev Krishan and Another

RESPONDENT

---

**Date of Decision:** Oct. 28, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 96
- Limitation Act, 1963 - Section 5

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

---

**Judgement**

Alok Singh, J.

Present petition is filed challenging the order dated 5.5.2010 passed by learned Additional District Judge, Ludhiana, whereby application moved by the Appellant-Petitioner herein seeking condonation of delay of 129 days in filing the first appeal was dismissed.

2. Brief facts of the present case are that a suit for partition was partly decreed vide judgment and decree dated 20.12.2007. Appellant wanted to challenge that preliminary decree by way of filing appeal u/s 96 of the Code of Civil Procedure. However, appeal was filed with the delay of approximately 129 days alongwith an application u/s 5 of the Limitation Act seeking condonation of delay in filing the appeal on the ground that certified copy of the judgment and decree was not applied within time because Plaintiff-Appellant was under the wrong impression that his suit was probably fully decreed and he came to know about the partial decree later on.

3. I have heard learned Counsel for the parties and perused the record.

4. Lis between the parties should be decided, as far as possible, at its own merit after giving sufficient opportunities to both the parties in accordance with law. None of the parties should be given walkover. In the present case, the explanation given by the Appellant that he remained under the confusion that his suit was completely decreed and he came to know about the partial decree later on seems to be justified.

5. In view of the above, present petition is allowed. Application moved by the Appellant u/s 5 of the Limitation Act stands allowed. Appeal shall be heard at its own merit. Both the parties shall appear before the first Appellate Court on 30.11.2010. Petitioner/Appellant shall pay Rs. 20,000/- as compensatory costs to Respondent No. 1 - Baldev Krishan, whose Counsel is present in the Court, within 10 days from today.