

**(2010) 11 P&H CK 0615**

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

**Case No:** Civil Revision No. 2467 of 2010

Resham Singh

APPELLANT

Vs

Balwant Singh

RESPONDENT

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**Date of Decision:** Nov. 8, 2010

**Acts Referred:**

- Limitation Act, 1963 - Section 5

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

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Alok Singh, J.

Present petition is filed challenging the order dated 23.4.2008 passed by the District Judge, Ferozepur, whereby application u/s 5 of the Limitation Act seeking condonation of delay in filing first appeal, was dismissed.

2. In fact, suit for recovery of Rs. 58,000/-along with interest @ 9% per annum from the date of advancement and @ 6% per annum from the judgment and decree, was decreed vide judgment and decree dated 6.12.2005. Appeal was filed by the Defendant/Petitioner before the First Appellate Court on 3.3.2007 after almost 15 months. The ground taken to condone the delay in filing the appeal is that counsel for the Defendant/Petitioner has told the Defendant that he need not come to the Court and he will be informed whenever his presence would be required. It is further stated in the application seeking condonation of delay that Civil Revision No. 2467 of 2010 -2-his counsel did not inform him about the judgment and decree and after awaiting a long he approached his counsel at Jalalabad on 21.2.2007 to know about the progress of the case and only then he was informed about the judgment and decree dated 6.12.2005 passed against him. He immediately applied for the certified copy of the judgment and decree, which was delivered to the Defendant/Petitioner on 27.2.2007. Thereafter, at the earliest appeal was filed before the learned First Appellate Court on 3.3.2007.

3. However, the learned District Judge did not agree with the Petitioner and dismissed the application seeking condonation of delay.

4. The golden rule is that none of the parties should be granted walk-over and ordinarily lis between the parties, as far as possible, should be decided at its own merit in accordance with law after affording sufficient opportunities to both the parties to place on record the entire evidence, material and to address the Court. The Petitioner has stated on oath that he could not file appeal within time because of the negligence of his Advocate and he was asked by his Advocate not to come to the Court and he would be informed telephonically whenever his presence is required in future. He has further stated on oath that after awaiting long when he approached his Advocate on 21.2.2007, then only he was informed that suit has been decreed against him and he immediately applied for certified copy and filed the appeal. In the opinion of this Court, in the peculiar facts and circumstances of the case, delay ought to have been condoned.

5. Petition is allowed. Delay in filing the appeal is condoned. Learned District Judge is directed to register the appeal at its original Civil Revision No. 2467 of 2010 -3-number and to decide the appeal in accordance with law. Parties shall appear before the learned District Judge on 30.11.2010 for further direction. Petitioner shall pay Rs. 5,000/-as costs to the Respondent within 15 days from today.