

**(2010) 11 P&H CK 0650**

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

**Case No:** CR No. 439 of 2010 (O and M)

Ved and Others

APPELLANT

Vs

Mani Ram and Another

RESPONDENT

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**Date of Decision:** Nov. 15, 2010

**Hon'ble Judges:** Rakesh Kumar Garg, J

**Bench:** Single Bench

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**Judgement**

Rakesh Kumar Garg, J.

The Petitioners have filed the instant revision petition challenging the impugned order dated 30.11.2009 whereby the Additional District Judge, Hisar, had dismissed the application for condonation of delay of 118 days in filing the appeal against the judgment and decree dated 22.4.2009 passed by the Civil Judge (Sr. Division), Hisar.

2. As per the averments, civil suit for declaration filed by the Plaintiff-Respondents to the effect that the Plaintiffs have right of way by uses and easement through the street as was shown in the site plan attached with the suit with consequential relief of injunction restraining the Petitioners from interfering in the peaceful enjoyment of right of public way by the Plaintiff-Respondents, was decreed vide judgment and decree dated 22.4.2009 passed by the Civil Judge (Junior Division), Hisar.

3. The Defendant-Petitioners filed an appeal before the Lower Appellate Court after the expiry of the limitation period and there was a delay of 118 days. An application for condonation of the aforesaid delay in filing of the appeal was filed praying therein that the appeal could not be filed in time due to some unavoidable circumstances. The said prayer of the Petitioners for condoning the delay was not accepted and vide order dated 30.11.2009, the Additional District Judge, Fast Track Court, Hisar, dismissed the application for condonation of delay, resultantly, the appeal was also dismissed as time barred.

4. Challenging the aforesaid order, by way of instant petition, the Defendant-Petitioners have prayed for setting aside the aforesaid order dated

30.11.2009 citing the reasons as averred in the present revision petition. In this petition, it has been stated that all the Petitioners who earnestly wanted to file the appeal against the judgment and decree dated 22.4.2009 were prevented from filing the same due to the reasons as cited in this petition. Not only this, the Petitioners have also attached the various documents along with this petition to support the averments made in this petition. Vide order dated 7.9.2010, the Respondents were granted an opportunity to file an affidavit to controvert the averments made in this petition. On 11.10.2010, again the case was adjourned for today. However, no affidavit controverting the averments have been filed.

5. In this view of the matter, the averments made in this petition, which are supported by an affidavit of the Petitioners and also by the documents produced on record, this Court find sufficient reasons for condoning the delay of 118 days in filing their appeal before the Lower Appellate Court. Resultantly, this petition is allowed. The impugned order is set aside and delay in filing the appeal before the Lower Appellate Court against the judgment and decree dated 22.4.2009 is condoned.

6. Let the parties appear before the Lower Appellate Court on 30.11.2010.

7. Keeping in view the peculiar facts and circumstances of the case, the Lower Appellate Court is directed to expedite the hearing of the appeal on merits.