

**IN THE COURT OF AMIT MANDYAL, ADDITIONAL
DISTRICT JUDGE, KULLU, DISTRICT KULLU, H.P.**

**Ashok Kapoor versus Murtu Devi & Ors.
CMP No.53/2024 (CIS R.No.96/2024).**

03.05.2025

Present: Sh. H.K. Sharma, Advocate for the applicant.

Sh. Harish Verma, Advocate for respondent
No.1.

Sh. T.C. Thakur, Advocate for respondents No.2
to 4.

Sh. Subham Sethi, Advocate for the respondent
No.5.

Sh. Mohinder Thakur, Advocate for respondent
No.6.

By way of this application moved under Section 5 of Indian Limitation Act and Order 41 Rule 3-A of CPC, applicant who intends to file an appeal against judgment and decree dated 17.01.2024 passed by learned Civil Judge Manali, District Kullu in Civil Suit No.68 of 2012, titled as "Murtu Devi versus Ashok Kapoor & Ors.", has prayed for condoning the delay in filing the appeal.

2. As per averments of the application, applicant had fallen ill on 14.03.2024 and was confined to bed, as such, could not come to Court to file appeal within limitation. It is averred that when applicant recovered slightly on 20.03.2024, he came to Court to file the appeal and had moved the present application. With these averments, it is prayed that delay in filing appeal may be condoned and he may be permitted to file the appeal.

3. Respondents were put to notice of application. Only respondent No.1 had preferred to file written reply to the same and other respondents had not filed any reply and adopted the reply filed by respondent No.1 as per statement made at bar on 29.03.2025.

4. In reply filed by respondent No.1, it is alleged that appeal has been filed on baseless and false allegations. It is denied that applicant had fallen ill and was confined to bed because of which could not prefer appeal within time. It is alleged that no medical record has been placed and delay was intentional and deliberate, as such, application be dismissed.

5. I have heard learned counsels for the parties and have gone through the record of the case carefully.

6. The perusal of the record shows that impugned judgment and decree are dated 17.01.2024 and copy was applied on 08.02.2024 and was prepared on the same day. The present application was moved on 20.03.2024. From the record it is clear that the appeal was not preferred within time. It is a matter of record that District Civil Courts of Himachal Pradesh falling in winter zone were closed w.e.f. 21.01.2024 to 18.02.2024. Admittedly, District Courts Kullu fall in winter zone. Thus, there is only delay of few days in filing the appeal if period of winter vacation is deducted. As per averments of the application, applicant was confined to bed w.e.f. 14.03.2024 because of which she could not file the appeal within time, which averments

have been refuted by the respondent. Needless to say that law favours the decision of cases on merits and not dismissing the cases on technical grounds and whenever substantial justice is pitted against procedural law, the path which advances the substantial justice should be adopted. Though, the applicant should have been vigilant, but if the application is not allowed, it will defeat the substantial justice and statutory right of applicant to file an appeal.

6. In view of discussions above, application is allowed subject to cost of ₹2,000/- and delay in filing the appeal is condoned. Needless to say that findings are purely for disposal of this application and shall have no bearing on the merits of main case. The application stands disposed of. It be tagged with main case file.

7. Perusal of memo of appeal shows that many arguable points have been raised. Hence, appeal admitted for hearing. The main appeal be registered after office report. Be listed for arguments on **03.07.2025**. Costs not paid. Be paid on the next date of hearing.

(Amit Mandyal)
Addl. District Judge,
Kullu, District Kullu, HP.

N.S.