

RCT ARCT 9/25

KRISHAN PAL SINGH Vs. KISHAN LAL AND ANR.

17.11.2025

Present : Appellant with Sh. Ashwani Sharma and Sh. Yajvender Chaudhary, Ld. Counsels for appellant.
Respondent with Sh. PN Sharma, Ld. Counsel for respondent.

Heard on the application under Section 5 of Limitation Act as well as on the appeal.

The appellant filed an eviction petition before the Ld. ARC seeking eviction of this property from the respondent. The said eviction petition when it was at the stage of RE, was dismissed for non-prosecution vide order dated 23.07.24. Subsequently, an application was filed by the appellant under Order 9 Rule 9 CPC dated 20.08.24 which was contested by the respondent and was dismissed on merits vide impugned order dated 09.07.25.

The present appeal has been preferred against the said impugned order. In regard to the delay in filing of the present appeal is concerned, it is submitted that the previous counsel Sh. Yogesh Gaur – Advocate, despite assurances, failed to file the appeal within time and therefore, the appellant was constrained to engage another counsel which took time and therefore, the appeal has been delayed.

The application has been opposed vehemently, on the ground that scandalous and unfounded allegations have been made against the previous counsel without any substance when another counsel was already engaged by the appellant at the time of arguments on the application under Order 9 Rule 9 CPC as reflected in the concerned order sheet of the Ld. Trial Court. This is a matter between the appellant and his counsel however, though it is now settled that the parties are also

supposed to be vigilant about their case and the fault of counsel cannot be a ground to allow delays, but considering the fact that the eviction petition was at an advanced stage of respondent's evidence and had been pending since 2014, a considerable loss shall be caused to the appellant in case, the same is dismissed on a technical issue.

Ld. Counsel for the appellant has also relied upon a judgment of **Rafiq Vs. Munshi Lal & Anr. 1981 AIR 1400 SC** wherein the Hon'ble Court held "*that a party should not suffer because of the inaction of the counsel*".

Considering the above as well as the fact of the pendency of the eviction petition since long and that too at an advanced stage, this court is inclined to take a lenient view and thus, condone the delay of 46 days in filing the appeal. Furthermore, considering the above facts, the appeal is also allowed subject to cost of Rs.10,000/- to be paid by the appellant to the respondent on the next date alongwith previous cost if any and the eviction petition bearing no. RCA ARCT 515/2016 is restored to its original position and number.

The Trial Court record shows that affidavit in evidence of the two witnesses of the respondent are already on record. Hence, it is also made clear that the appellant/petitioner shall be granted only one opportunity to cross-examine them.

Appeal file be consigned to Record Room and TCR be sent back to Ld. Trial Court alongwith copy of this order.

Parties are directed to appear before Ld. Trial Court on 12.01.2026.

(SANJAY SHARMA-I)
Principal District & Sessions Judge
Shahdara, KKD Delhi/17.11.2025