

Nek Mohammad & Ors. vs. The Mother Cooperative Agriculture Service
Society

C.R. No. 42 of 2022.

14.11.2025 Present: Mr. Atharv Sharma, Advocate, for the
petitioners.

Mr. Surinder Saklani, Advocate, for the
respondent.

CMP(M) No. 340 of 2025.

By way of this application, a prayer has been made to condone the delay in filing the revision petition against the order dated 11.11.2019 passed by the learned Senior Civil Judge, Court No.1, Amb, District Una, H.P. in Civil Suit No. 57/1 of 2018.

It has been averred that against the aforesaid order, the applicants had preferred an appeal under Order 43, Rule 1(a) of the Code of Civil Procedure before the learned District Judge, Una. The appeal so filed was assigned for disposal to the Court of learned Additional District Judge-1, Una. The said Court entertained the appeal and decided it on merits vide order dated 17.12.2021 and thereby affirmed the order passed by the learned trial Court after dismissal of the appeal.

The instant petition was filed thereafter on 24.02.2022 in this Court and was within limitation from the date of passing of appellate order. During the pendency of

the instant petition, it was pointed out that the appeal under Order 43 was not maintainable against the order passed by the learned trial Court, whereby the application of the applicant for rejection of plaint had been rejected.

In this backdrop, the present application has been filed by pleading that the appeal had been filed by the applicants under a bonafide belief based on the judgment passed by the Hon'ble Supreme Court in *Liver pool & London S.P. & I Association Ltd. vs. M.V. Sea Success I and another*, (2004)9 SCC 512. Applicant now seeks leave to treat the revision petition to be one against the original order passed by the learned trial Court by resorting to the provisions of Sections 5 and 14 of the Limitation Act.

Reply has been filed by the non application. The prayer made in the application has been contested.

On going through the material on record, I do not find any malafide on the part of the applicants for making the prayer in the instant application. It is not disputed that the applicants had taken recourse by filing the appeal under Order 43 against the original order and such appeal had been filed within the period of limitation. The order passed by the Appellate Court suggests that no objection as to the non maintainability of the appeal was

raised by the other side and resultantly, the appeal had been decided on merits. Since, the applicants have bonafide resorted to the wrong remedy, the case for grant of prayer made in the application is made out. Accordingly, the application is allowed. The revision petition is ordered to be treated as revision against the original order passed by the learned trial Court. The delay in filing the said revision is condoned for the reasons stated hereinabove. Application stands disposed of.;

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Arguments heard. Judgment reserved.

(Satyen Vaidya)
Judge

14th November, 2025.
(Jai)