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SLP(C)No. 14594-14596 OF 2000

ITEM No.46

Court No. 5

SECTION XIV

A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.14594-14596/2000

(From the judgement and order dated 26/04/2000 in AN NIL/99  
,CMP 71/99  
of The HIGH COURT OF H.P AT SHIMLA)

PREM CHAND

Petitioner (s)

VERSUS

RUP CHAND & ORS.  
( With Office Report )

Respondent (s)

Date : 26/02/2001 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS  
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s)

Mr. Uma Datta,Adv.

For Respondent (s)

Mr.Himinder Lal,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeals are disposed of.

(Meena Sarin)  
AR Cum PS

(HK Bhatia)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1507 to 1509 OF 2001  
(Arising out of SLP(C) Nos. 14594-14596/2000)

Prem Chand

...Appellant

versus

Rup Chand and Ors.

...Respondents

O R D E R

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Leave granted.

Appellant filed an appeal before the High Court with a delay of 7 days and also with deficiency in the matter of court fee. That appeal was returned for re-representation after curing the defects. It was done so by the appellant but it took a long period of one year for making such re-representation. The High Court refused to condone the delay of 7 days in filing the appeal and also refused to condone the delay of making the re-representation of the appeal. Hence, the impugned order was passed rejecting the application filed under Section 5 of the Limitation Act and the consequent order of rejection of the appeal and petition also.

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The period of limitation for filing the appeal was 30 days. The appeal was presented, though defective, with a delay of 7 days. He tried to explain the said delay of 7 days stating that he was sick and old and was bed-ridden for a long time and was not in a position to move the advocate concerned. We do not think it necessary to go deep into the said explanation as the delay is only marginal. We are inclined to condone the same. We do so.

Regarding representation, the delay occurred, according to the appellant, due to reasons beyond his control. Learned counsel for the respondents submitted that even after representation, the deficiency of the court fee subsisted. This is disputed by the learned counsel for the appellant. We do not propose to go into that dispute, for, if the deficiency persisted the Registry would not have sent up the appeal for consideration of the application under Section 5 of the Limitation Act. It is still open to the respondents to raise the contention that the court fee had not been remitted in full.

Learned counsel for the appellant submitted that the court fee ordered to be refunded has not been collected by the appellant.

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In the result, we allow the appeals and set aside the impugned order. The delay involved in filing the appeal before the High Court as well as the delay involved in representing the same would stand condoned. But, this is subject to the right that the question of deficiency of the court fee, if raised, either by the

respondents or by the State can be determined afresh if it is so warranted.

The appeals are disposed of accordingly.

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.....J.  
(K.T. THOMAS)

.....J.  
(R.P. SETHI)

New Delhi,  
February 26, 2001