

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).13016/2011

(From the judgement and order dated 05/01/2011 in CR No.172/2002 of The  
HIGH COURT OF H.P AT SHIMLA)

RAMESH KUMAR

Petitioner(s)

VERSUS

SHARWAN KUMAR (D) THRU. LRS. & ORS.  
(With office report )  
(For final disposal)

Respondent(s)

Date: 14/02/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s)

Mr. E.C. Agrawala,Adv.

For Respondent(s)

Mr. Navin Chawla,Adv.  
Ms. Rukhsana Choudhury ,Adv.UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[ Neeta ]

[ Usha Sharma]

Sr. P.A.

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO. 2574 OF 2014  
(Arising out of SLP (C) No. 13016 of 2011)

RAMESH KUMAR

.... Appellant(s)

VERSUS

SHARWAN KUMAR (D) THRU. LRS. &amp; ORS.

.... Respondent(s)

O R D E R

Leave granted.

This appeal has been preferred by the appellant/plaintiff against the order dated 5th January, 2011 passed by the High Court of Himachal Pradesh, Shimla in Civil Revision No.172/2002. By the impugned order the High Court dismissed the revision application preferred by appellant and refused to condone the delay of 9 days in preferring the appeal and affirmed the order passed by the Appellate Court.

The appellant/plaintiff preferred the suit before Sub Judge, Shimla and the same was dismissed by order dated 6th March, 1997. The appeal against the same was filed after delay of 9 days along with the petition under Section 5 of the Limitation Act for condonation of delay. The Appellate Court by order dated 23rd November, 2001 dismissed the petition under Section 5 of the Limitation Act and refused to condone the delay on the ground that the appellant had earlier taken adjournment in the appeal.

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We have heard, learned counsel for the parties and perused the record. Taking into consideration the relevant facts and circumstances of the case we find that the appellant has made grounds for condonation of delay of 9 days in preferring the appeal. The appellate Court was not correct in dismissing the application under Section 5 of the Limitation Act on the ground that the appellant has earlier taken adjournment and that the witness of the appellant was not present. For the reason aforesaid, we set aside the impugned order 5th January, 2011 passed by the High Court of Himachal Pradesh, Shimla in Civil Revision No. 172/2002 and order dated 23rd November, 2001 passed by the Additional District Judge, Shimla, condone the delay and remit back the matter to the Additional District Judge, Shimla for decision on merit.

It is expected that the appellate Court will dispose of the appeal expeditiously as it is arising out of the suit filed in the year 1986.

The appeal is allowed with aforesaid observations.

.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.  
(KURIAN JOSEPH)

NEW DELHI;  
FEBRUARY 14, 2014