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**RSA No.2610 of 2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**RSA No.2610 of 2025 (O&M)  
Date of decision : 12.03.2026**

Mahender and another  
Versus  
...Appellants

State of Haryana and others  
...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sumit Sangwan, Advocate  
for the appellants.

Mr. Naveen S. Panwar, DAG, Haryana  
for respondents No.1 and 2 with  
Mr. Bijender Singh, SDE, PWD (B&R), Bhiwani.

Mr. Prateek Garg, Advocate  
for respondent No.3

**PANKAJ JAIN, J. (ORAL)**

**CM-9013-C-2025**

This is an application filed under Section 151 CPC seeking condonation of delay of 27 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicants/appellants have made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 27 days in re-filing the instant appeal is hereby condoned.

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**CM-9014-C-2025**

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 497 days in filing the instant appeal.

Notice of the application.

Counsel representing respondents No.1 and 2 accept notice and plead no objection.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 497 days in filing the instant appeal is hereby condoned.

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Plaintiffs are in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position before the Court of the First Instance i.e., the appellants as 'plaintiffs' and the respondents as 'defendants'.

3. Plaintiff filed suit seeking decree of permanent as well as mandatory injunction restraining defendants from making *pucca nala* in front of their shops. The case of the plaintiffs was that there already existed a *nala* in front of building of the plaintiffs. Without there being any necessity, defendants started digging and constructing a new drain which



abuts the front wall of the shops of the plaintiffs. The same has not only caused nuisance but is also a continuous cause of infections in the area.

4. Suit was contested by the defendants claiming that the suit was filed when the construction of the drain already stands completed. The same has been constructed for proper flow of waste/rain water to save the inhabitants from the epidemic. The drain being too deep, the apprehension raised by plaintiffs, is without any basis.

5. Suit was decreed by the Trial Court, observing as under:

“15. The defendants examined DW1 Sh Sawit Kumar Punnu Sub Divisional Engineer, PWD (B & R) Tosham. He also admitted that the distance of drain is about 7" in front of shops no.1 to 7. However, the distance of drain from shop no.8 to 19 is 9'. It has been submitted by the plaintiffs that in front of shop no. 20 again the curve is given and the drain was constructed at a distance of the 7" from the shops. This witness expressed his ignorance about this fact. He could not even produce the measurement book. The onus shifted upon the defendants that the drain was constructed as per the sanctioned plan. They failed to lead any evidence in this regard. On the other hand, the plaintiffs have successfully proved the existence of old drain in which a curve was given just in front of shop no.7 while constructing the new drain to bring it just in front of their shops. The defendants failed to explain as to why this was done. This court is of the view that there can be no explanation for doing that.

16. The drain in front of shops no. 8 to 20 should be removed and constructed at the same place where the old drain was in existence. The cost of reconstruction should be recovered from the then Sub-divisional Engineer, Tosham and the Junion Engineer, Tosham.

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6. Defendants preferred appeal.
7. The same has been allowed reversing the findings recorded by the Trial Court. Suit filed by the plaintiffs, stands dismissed.
8. Counsel for the appellants has produced copy of the Site Plan depicting the newly constructed drain and the old drain which is part of the record as Exhibit P-9. He submits that during the pendency of the appeal pipelines have been laid down in the old *nala*. The result is that now the drain is straight and there is no bend.
9. On 11.03.2026 in connected revision bearing CR No.5404 of 2025, following order was passed:

“Counsel for the petitioners submits that the respondents have made an alternate arrangement by installing pipes in old *nala*. The action of the respondents, in a way, vindicates the grievance raised by the petitioners, provided the same continues.

Learned State Counsel prays for time to seek instructions.

xxx

xxx

xxx”

10. Today, State Counsel on instructions from Mr. Bijender Singh, SDE, PWD (B&R), Bhiwani admits that pipes have been installed in old *nala* and now the drain runs straight. He submits that the State apprehends that the plaintiffs shall encroach upon the land in front of their shops, and rather have already encroached upon the land in front of their shops. He



however undertakes that if the drain has to be shifted at any point of time, the same shall be straight in its alignment.

11. Counsel for the appellants joins issue thereon.

12. However, this Court does not deem it appropriate to go into the issue of encroachment in the present *lis*.

13. The aforesaid statement satisfies the counsel for the appellants/plaintiffs.

14. In order to make the judgment more clear, it is ordered that the Site Plan, Exhibit P-9, be made part of the decree.

15. Accordingly, the appeal is disposed off in view of statement made by State Counsel and in terms of Exhibit P-9.

16. Pending application, if any, shall also stands disposed off.

**March 12, 2026**

**Dpr**

**(Pankaj Jain)  
Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No