

CR No.2023 of 2013

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

**CR No.2023 of 2013
Date of decision:20.01.2015**

Rajesh @ Krishan

...Petitioner

Versus

Ram Niwas

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Lamba, Advocate,
for the petitioner.

Mr. Sanjay Mittal, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

This revision petition is against the order of the lower Appellate Court by which the application filed by the petitioner for condonation of delay of 60 days in filing the appeal has been dismissed.

The petitioner filed the suit for joint possession alleging that he is a co-sharer in agricultural land; he was a minor on 07.06.2005 as he was born on 02.08.1988 and could not have executed the sale deed being a minor. On the pleading of the parties, the following issues were framed by the trial Court on 04.06.2009:-

- “1. Whether Rajesh @ Krishan is one and same person?OPP.
2. If issue no.1 is proved, whether plaintiff was

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minor on 07.06.2005 and sale deed dated 07.06.2005 vasika no.636 is null and void?OPP. (issues no.1 and 2 have been reconstructed vide order dated 10.05.2012).

3. Whether the plaintiff is estopped from filing the present suit by his own act, conduct?OPD.
4. Whether the suit is not within the limitation?OPD.
5. Whether the suit is barred by Order 7 Rule 11 CPC?OPD.
6. Relief.”

The only material point involved in the case of the plaintiff was that being a minor, he was not lawfully entitled to enter into a contract much-less to execute the sale deed. Thus, the entire focus of the Court was to hold as to whether the plaintiff was a minor or not at the time of execution of the sale deed? The trial Court has observed that the plaintiff himself has alleged that he is known as Rajesh @ Krishan, whereas Krishan was born on 17.06.1986 and the sale deed was executed on 07.06.2005, therefore, he was not the minor, whereas the case of the plaintiff was that he was born on 02.08.1988.

Aggrieved against the judgment and decree of the trial Court, the plaintiff filed the first appeal along with an application for condonation of delay of 60 days. The lower Appellate Court, at the first instance, while deciding the application for condonation of delay, framed 3 issues on 04.12.2012, allowed the parties to lead their evidence and dismissed the

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application holding that the plaintiff has failed to prove that he was under depression because of a criminal case filed against him by his wife under Section 125 of the Code of Criminal Procedure, 1973 (here-in-after referred to as the “Cr.P.C.”) and that he was given a wrong advice by some advocate that the limitation to file the appeal is 90 days instead of 30 days. At the same time, the lower Appellate Court also observed on the merits of the case holding that the plaintiff has failed to prove that he was a minor at the time of execution of the sale deed.

Counsel for the petitioner has submitted that when he filed the appeal, he had also filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for leading additional evidence to produce on record the birth certificate of his sister. It is submitted that according to that birth certificate, he was rightly born on the date given by him and thus was a minor but the said application could not have been taken up because the application for condonation of delay was dismissed. As a result thereof, his meritorious matter was rejected at the threshold only because of the reason that there was a delay of 60 days in filing of the appeal. In this regard, he has relied upon a judgment of the Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others**, 1987 AIR (SC) 1353 and a judgment of this Court in the case of **Mrs. Saroj and others v. Sh. Baljeet Singh and another**, 2010(3) R.C.R. (Civil) 929.

On the other hand, counsel for the respondent has argued that wrong advice by an advocate is not a sufficient ground as no complaint was

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filed against the counsel for giving the wrong advice nor any circumstance was disclosed in which the wrong advice was alleged to have been given to the petitioner. In support of his contention, he has relied upon a judgment of Delhi High Court in the case of **Haro Singh v. Ajay Kumar Chawla and others**, 2004(2) AD (Delhi) 117.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the impugned order passed by the lower Appellate Court deserves to be set aside.

The case of the petitioner is that he was a minor at the time when the sale deed was executed as he was born on 02.08.1988 as recorded in the birth register maintained by the Health Department of Haryana. However, the trial Court dismissed the suit on the ground that the petitioner claimed himself to be known as Rajesh @ Krishan, whereas the birth certificate of Krishan produced by the defendants shows his date of birth as 17.06.1986 and as such, he was not a minor on 07.06.2005.

Be that as it may, the appeal filed by the plaintiff was delayed by 60 days and according to him, he was misguided about the period of limitation to file appeal by some advocate. It is altogether different thing that he did not file any complaint or take any action against the said advocate as generally in these type of cases, no complaint is filed because the advice was not given in writing to him.

In any case, the petitioner has also set up a case that he was served with the summons in a case filed by his wife under Section 125 of the Cr.PC. which were also placed on record, therefore, being under

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depression because of the criminal case, he could not pursue his civil litigation within the prescribed time.

Although the cause shown by the petitioner has not been accepted by the lower Appellate Court but it cannot be ignored that the petitioner has also filed an application for additional evidence in the appeal to prove the date of birth of his sister by placing on record her birth certificate which is substantial evidence to prove the actual date of birth of the petitioner but that matter cannot be taken up because the case of the petitioner was dismissed at the threshold while dismissing his application for condonation of delay. In this regard, the judgments relied upon by learned counsel for the petitioner in **Collector, Land Acquisition, Anantnag's case (supra)** and **Mrs. Saroj's case (supra)** support his case rather than the judgment relied upon by the counsel for the respondent in **Haro Singh's case (supra)**.

Thus, in view of the aforesaid discussion, the present revision petition is hereby allowed with costs of ₹10,000/-; the impugned order is set aside; the delay of 60 days in filing the appeal before the lower Appellate Court is condoned and the lower Appellate Court is directed to decide the appeal filed by the petitioner on merits, in accordance with law.

January 20, 2015
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(Rakesh Kumar Jain)
Judge