

CR No.2051 of 2012

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

**CR No.2051 of 2012
Date of decision:06.01.2015**

Bhati Devi

...Petitioner

Versus

Punjab National Bank and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

Mr. A.S.Virk, Advocate,
for the respondents.

Rakesh Kumar Jain, J. (Oral)

This petition is against the orders of the Courts below dated 28.02.2011 and 21.11.2011 by which objection filed by the petitioner has been dismissed while dismissing the application for condonation of delay.

The brief facts of the case are that respondent no.1 filed a suit for recovery against respondent no.2. The husband of the petitioner, namely, Madho Parshad was the guarantor when respondent no.2 had obtained the loan. The suit was decreed for a sum of ₹86,192/- on 06.09.1990. After the decree, the execution was preferred by respondent no.1 and the land measuring 34 kanal 09 marlas of the guarantor Madho Parshad was attached and put to auction in which respondent no.3 was the highest bidder. However, the said auction was challenged by Madho

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Parshad by filing objection which was allowed on 21.11.1998, *inter alia*, on the grounds that the bid money was not sufficient; there was no notice of sale and that only 12 kanals of land would satisfy the decree, therefore, the entire land measuring 34 kanal 09 marlas was not required to be sold. The said order dated 21.11.1998 was challenged by respondent no.3 by way of appeal which was dismissed on 20.09.1999. Thereafter, respondent no.3 filed CR No.5462 of 1999 before this Court which was disposed of on 21.03.2002 with a direction to the Executing Court to frame the relevant issues, allow the parties to lead evidence and then decide the objection filed by Madho Parshad. Accordingly, the issues were framed by the Executing Court on 23.05.2002 and the case was posted for evidence on 27.08.2002. Unfortunately, on 22.08.2002, Madho Parshad had expired and there was no representation on his behalf as a result thereof, he was proceeded against *ex parte* and the objection filed by him was decided against *ex parte* on 11.11.2002.

The petitioner is the widow of Madho Parshad and is having only daughters. She came to know about the order of dismissal dated 11.11.2002 on 28.03.2004 and immediately filed the application for setting aside the *ex parte* proceedings dated 27.08.2002 and the dismissal order dated 11.11.2002. Since the application filed by her was beyond the period of limitation, therefore, she also filed an application for condonation of delay which was dismissed on 14.11.2005 against which the petitioner filed an appeal which was allowed whereby the Appellate Court remanded the case back to the Executing Court for allowing the parties to lead evidence

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after framing the relevant issues. Accordingly, the Executing Court framed the issue as to whether there was any sufficient ground for condonation of delay. The petitioner examined as many as three witnesses including herself. The Executing Court dismissed the application for condonation of delay on 28.02.2011 on the grounds that the petitioner is not a *Pardanashin* lady as she has been working in the fields; there are male members in the family who are brothers of the deceased Madho Parshad who could have looked after the litigation after his death and there was a *munadi* in the village at the stage of attachment of the land and, therefore, it was unbelievable that the brothers of the deceased Madho Parshad had not taken notice of the said attachment.

Aggrieved against the order dated 28.02.2011, the petitioner preferred the appeal which has also been dismissed on 21.11.2011 more or less on the same grounds.

Thus, aggrieved against both the aforesaid orders dated 28.02.2011 and 21.11.2011, the present revision petition has been preferred in which notice of motion was issued on 24.08.2012 on the statement made by counsel for the petitioner that the petitioner is ready to pay back the sale price of the land to respondent no.3-auction purchaser along with interest thereon. Thereafter, respondent no.3 put in appearance and the matter was placed by this Court before the Mediation and Conciliation Centre of this Court for exploring the possibility of a compromise. However, on 03.09.2013, the matter was sent back by the Mediation and Conciliation Centre to this Court as the parties could not come to a settlement.

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Counsel for the petitioner has vehemently argued that the reasons given by the Courts below for dismissing the application for condonation of delay and ultimately the objection filed by the petitioner are not sustainable as it is submitted that the petitioner is having no male issue and there was no evidence that brothers of the deceased Madho Parshad were living with Madho Parshad at the time of his death. It is further submitted that the Executing Court have taken a conservative view of the fact that the petitioner was not a *Pardanashin* lady, however, the said view has been reversed by the Appellate Court and the application has been dismissed only on the ground that there is no evidence on record that she came to know about the impugned order when she had gone to the fields for the purpose of reaping the mustard crop. It is submitted that the husband of the petitioner was looking after this litigation in which time and again the appeals have been filed and had he not died on 22.08.2002 before the date when the evidence of the petitioner was to be recorded, the situation which has arisen today would not have arisen and the sale of land measuring 34 kanal 09 marlas could have been restricted upto 12 kanals. It is also submitted that as a matter of fact, the petitioner is not the principal borrower rather her husband stood as a guarantor for the amount which has been taken by respondent no.2 from respondent no.1 but the entire land of the petitioner, who is a widow, is being sold because of the decree. It is also submitted that insofar as the *munadi* is concerned, that is only a presumption drawn by the learned Courts below that since the *munadi* has been made in the village, therefore, everybody knew about the auction

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which is otherwise not within the knowledge of the petitioner as she is a lady who remains most of the time at home.

On the other hand, counsel for respondent no.3 has submitted that he had purchased the suit property in auction and should be allowed to reap the fruits thereof as there is no sufficient cause assigned by the petitioner for condonation of delay on the basis of which objection filed by the petitioner has been dismissed. It is submitted that the reason given by the petitioner of acquiring the knowledge of the *ex parte* proceedings is not made out from the record.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the present revision petition has the merits for its success. The reason for arriving at this conclusion is that the litigation had started in the year 1993. At that time, Madho Parshad was alive and was only the guarantor of the amount which was taken by respondent no.2. He had contested the attachment of his property by filing objection which was allowed on 21.11.1998 and instead of 34 kanal 09 marlas of land, 12 kanals of land was ordered to be auctioned which would have satisfied the decree of the plaintiff-bank. Moreover, when defendant no.3 had filed the CR No.5462 of 1999 against the order dated 20.09.1999, this Court had directed the Executing Court to frame the relevant issues for the purpose of leading evidence. Issues were framed on 23.05.2002 and the case was posted for 27.08.2002 for the purpose of leading evidence by the objector Madho Parshad but unfortunately he expired on 22.08.2002 and, therefore, no evidence could have been led on behalf of Madho Parshad

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who was ordered to be proceeded against *ex parte* w.e.f. 27.08.2002 and *ex parte* order dismissing the objection filed by Madho Parshad was passed on 11.11.2002. When the petitioner, who is a widow, having no male issue and has also been declared as a *Pardanashin* lady by the Appellate Court, came to know about the *ex parte* order dismissing the objection filed by her husband, filed the application for setting aside the *ex parte* proceedings and the *ex parte* order dismissing the objection but by that time, the delay of more than of a year had occurred for which the Executing Court initially dismissed the application for condonation of delay but the appeal filed by the petitioner was allowed.

All these facts cumulatively go to show that the petitioner has been pursuing the litigation diligently and only because of the non-representation due to death of the sole bread winner of the family on 22.08.2002, the *ex parte* proceedings had been initiated. In these circumstances, the findings recorded by both the Courts below that the petitioner was aware of the auction proceedings as she had gone to the fields for the purpose of harvesting the crop and there were other male members in the family, i.e. brothers of Madho Parshad, is not a sound reasoning for dismissing the application for condonation of delay.

Thus, in view of the aforesaid facts and circumstances, the present revision petition is allowed, orders dated 28.02.2011 and dated 21.11.2011 passed by the Courts below are set aside and the matter is remanded back to the Executing Court to decide the objections on merits. The parties are directed to appear before the learned Executing Court on

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09.02.2015. It is further made clear that the order passed by this Court on 21.03.2002 in CR No.5462 of 1999 would remain operative to the extent of granting two effective opportunities to both the parties to lead their evidence in regard to the objection filed by the petitioner.

January 06, 2015
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(**Rakesh Kumar Jain**)
Judge