

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3003 of 2013 (O&M)

Date of Decision: 07.04.2015

Gram Panchayat Ismailabad

.....Petitioner

Vs.

Punjab Wakf Board

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Dinarpur, Advocate,
for the petitioner.

Mr. J.S. Bhatia, Advocate,
for the respondent.

SABINA, J.

Petitioner has filed this petition challenging the order dated 26.04.2013, whereby application moved by the petitioner seeking condonation of delay in filing the appeal, was dismissed.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

Respondent-Wakf Board had filed suit for permanent injunction against the petitioner seeking direction that the respondent be not dispossessed from the suit land forcibly and illegally. Petitioner was proceeded ex parte and the trial Court vide judgment/decreed dated 15.01.2000, restrained the petitioner from dispossessing the respondent from the suit land forcibly and illegally except by adopting the due process of law. So far as the question of ownership is concerned, the same was not

decided by the trial Court. Petitioner filed CWP No. 120 of 2010, in this Court challenging the judgment/decreed passed by the trial Court. The said petition was disposed of by this Court vide order dated 08.07.2011 (Annexure P-4) and the same reads as under:-

“Learned counsel for the petitioner has fairly stated that against the rejection of the application seeking setting aside ex parte judgment and decree an appeal is maintainable under Order 43 Rule 1(c), therefore, petitioner be permitted to withdraw this petition with liberty to file appeal against the order dismissing the application seeking setting aside of the ex parte judgment and decree.

Petition is dismissed as withdrawn. If appeal, as suggested by learned counsel for the petitioner, is filed within 30 days from today it shall be decided at its own merit in accordance with law and shall not be dismissed on the ground of limitation. In the appeal petitioner shall be at liberty to raise all the legal pleas and factual pleas which are available to the petitioner justifying setting aside the ex parte judgment and decree.

As per the above order, petitioner could have preferred an appeal before the appellate Court within 30 days of the passing of the order. However, the appeal was filed by the petitioner after a delay of one year, seven months and sixteen days. Learned trial Court while dismissing the application seeking condonation of delay in filing the appeal has rightly held that at the time of withdrawal of the writ petition before this Court, applicant was the Sarpanch of the Gram Panchayat. However, applicant had failed to establish as to how he got the knowledge of the passing of the decree at a belated stage.

As per the impugned decree, possession of the Wakf Board was protected. There was no occasion for the Wakf Board to have gone to take the possession of the property in question. Since there was unexplained delay in filing of the appeal, learned trial Court has rightly declined to condone the delay in filing of the appeal.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

April 07, 2015
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