

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3148 of 2014 (O&M)

Date of decision: March 13, 2015.

Sukhdev Singh

... **Petitioner**

v.

Darshan Singh and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri Mohd. Yousaf, Advocate, for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Dismissal of appeal against order dated 2.5.2000 of the lower court on the ground of delay rejecting the application under Section 5 of the Limitation Act, 1963 for condonation of such delay is under challenge in this revision petition.

2. It is worth notice that in a suit preferred by Darshan Singh, now respondent, defendants, including Mohinder Singh (since deceased) and represented by his son Sukhdev Singh, petitioner herein, ex-parte decree was passed. Appeal was preferred against such decree by said Mohinder Singh and other defendants after more than five years with an application under Section 5 of the Limitation Act, 1963 for condonation of delay. Finding no ground for condoning the delay, the application was dismissed and sequelly, the appeal also met the same fate.

3. In this revision petition, it is now claimed that against dismissal of the suit, a revision petition had wrongly been preferred and the delay in

filing the appeal occurred due to wrong advice of his counsel, which should not be taken to his prejudice. It is urged that the impugned order suffers from omission to appreciate the basic principle that a party should not suffer for the fault of his lawyer.

4. When paper book has been perused during the course of arguments addressed by Counsel for the petitioner, it transpires that the matter is not as simple as has been tried to be projected. Rather, the appellate court below took pains and gave full opportunity to the defendants, petitioner herein, to sustain and support their plea of condonation of delay. Defendant Mohinder Singh who is now deceased and is being represented by his son Sukhdev Singh, petitioner herein, had entered the witness box as RW1 wherein he had conceded that he and other defendants had duly been served in the suit and were even represented by a counsel who later did not appear and they were proceeded against ex-parte on 21.11.1995. In the meanwhile, the suit had been dismissed under Order IX Rule 8 CPC on 28.8.1998. The defendants had made an application for setting aside the ex-parte order against them vide application of 25.3.1996.

5. Later, the suit despite resistance from the defendants was restored, whereas application of the defendants for setting aside the ex-parte proceedings was dismissed on 2.5.2000. It is claimed that order dated 2.5.2000 was challenged by way of revision petition and when they did not appear before the lower court, ex-parte decree was passed against them on 7.5.2006.

6. Averments of the appellant-defendants are not corroborated by their counsel Shri Surjit Singh Rai who appeared in the witness box as RW1 and has categorically stated that an application for restoration of the suit by defendant Darshan Singh was strongly contested by him for the defendants but the case was restored.

7. He has categorically averred thereafter that defendant Mohinder Singh and others did not appear and were proceeded against ex-parte. He has also denounced the case of the defendants out of whom one is revisionist herein, that he had filed any revision petition. Rather, he has stated that he had advised them to file an appeal but they continued delaying the matter and no appeal was filed.

8. It is worth notice that even in execution proceedings, they were strongly contesting and had filed objection petition but had not filed an appeal against the ex-parte decree, wherein they could very well challenge order dated 2.5.2000 whereby their application for setting aside ex-parte proceedings against them had been dismissed. The appellant had a right under Rule 1-A of Order XLIII CPC but delay continued on the part of the defendants. It is rather worth notice that to avoid execution and fruits of the decree and to create third party interests, the defendants executed sale deed dated 3.9.1995 even after passing of decree of specific performance against them when the property in fact was long ago mortgaged in favour of a bank. Not only this, thereafter, the property was mortgaged clandestinely on 30.12.1995. Yet another mortgage deed was executed by two defendants viz. Gurdev Singh and Joginder Singh on 3.1.2006. These moves by the defendants proved innocuous. Rather, they were intentionally burdening the property which was subject matter of decree dated 9.5.2000 with a view to thwarting of its execution. The things did not stop there.

9. In order to safeguard their interest, the applicant-defendants had even entered into another agreement with the original owner, namely Smt. Gian Kaur and others with an intention that if the property allowed to be purchased by them after the agreement to sell in favour of respondent-plaintiff Darshan Singh goes away, in that situation Smt. Gian Kaur and others will be under obligation to execute the sale deed regarding their

property. This fact has clearly been admitted by Bhupinder Singh AW1 in his cross examination.

10. It is a clear case where move of the applicant-defendants for condonation of delay is mala-fide and is an effort to over-reach the law and legal rights of the opposite party. There is lapse of more than six years, to suffer repetition, which in the execution petition, the defendants including the petitioner herein, had made. Why no appeal was preferred against ex-parte decree of 9.5.2000 is not understandable.

11. It is a pleaded case that they were in the know of ex-parte proceedings and ex-parte decree against them and had been dilly-delaying the matter where, in fact, no revision petition had been preferred against order dated 2.5.2000. Their plea has been denounced by their own counsel.

12. Order dated 27.8.20013 declining the application for condonation of delay and consequent dismissal of appeal, does not suffer from any factual error or legal infirmity. The revision petition is consequently dismissed.

[Dr. Bharat Bhushan Parsoon]
Judge

March 12, 2015.
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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*