

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3682 of 2013 (O&M)

Date of Decision: February 21st , 2015

Malwinder Singh

.....Petitioner

versus

Kamlesh

.....Respondent

CORAM: Hon'ble Mr. Justice Dr.Bharat Bhushan Parsoon.

Argued by: Shri Sukhmeet Singh, Advocate for the petitioner.

Shri Sham Lal Bhalla, Advocate for the respondent.

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Dr.Bharat Bhushan Parsoon, J.

1. Dismissal of application under Section 5 of the Limitation Act, 1963, for condonation of delay in filing the First Appeal vide order dated 29.05.2012, forms genesis of this revision petition.

2. Defendant-Malwinder Singh filed the first appeal against the judgment and decree dated 13.03.2009 of the lower Court whereby suit of the plaintiff has been decreed. Application for condonation of delay had also been appended. The same was contested tooth and nail by the respondent-plaintiff. It was claimed that plea of the applicant-defendant that his counsel had not informed him about the judgment and decree passed against him and he could only know of the same on receipt of summons on 01.10.2009 in respect of execution application filed by the plaintiff, was a contrivance to cover up delay in filing the appeal.

3. To decide the application following issues were framed by District Judge, Fatehgarh Sahib :

1. *Whether there are sufficient grounds to condone the delay in filing the appeal ? OPP*
2. *Relief.*

4. After receiving oral as well as documentary evidence from the parties, District Judge, Fatehgarh Sahib had come to a firm finding that the application for condonation of delay was not having any merit and it was then dismissed.

5. In the present revision petition, it is claimed that when the revisionists had no knowledge of the decree passed against him he could not have filed an appeal and it was only on coming to know of the decree that he had engaged a counsel and had filed the appeal. It is urged that the learned Appellate Court did not consider the circumstances in the context in which the delay was caused, resulting in great prejudice to the petitioner applicant-defendant.

6. Counsel for the respondent-plaintiff on the other hand has urged that there is no merit in the petition and it is merely a camouflage to delay and dilate the recovery of decretal amount from the applicant petitioner-defendant. Prayer for dismissal of the petition, has been made.

7. Hearing provided to counsel for the parties, while perusing the paper book reveals that suit for recovery of Rs.2 Lacs along with interest @ 12% per annum for negligent act of the defendant applicant-petitioner herein, in rejecting the nomination paper of respondent-plaintiff for the post of Sarpanch in the year 1998 at Sirhind, Tehsil and District Fatehgarh Sahib, was decreed for recovery of Rs.1 Lac with interest @6% per annum till realization of the amount. Judgment and decree is of 13.03.2009.

8. Defendant-applicant petitioner herein was represented by his counsel viz. Sh.A.S.Cheema, Advocate. Learned appellate Court has referred to cross-examination of defendant Malwinder Singh. It has been noticed that at the time of engaging Sh.A.S.Cheema, he had given his address as well as his contact telephone number, as he was his friend. The applicant-defendant also conceded that his counsel Sh.A.S.Cheema,

Advocate used to contact him on his telephone.

9. The question herein is not as to whether Sh.Cheema, counsel for the petitioner was having his telephone number or residential address or not.

10. The simple and straight question posing for answer is as to whether Sh.A.S.Cheema had informed his client and friend viz. petitioner Malwinder Singh, about suit of Kamlesh having been decided against him for recovery of Rs.1 lac with interest on 13.03.2009 or not?

11. There is categorical statement of applicant-Malwinder Singh that notwithstanding the fact that his counsel Sh.A.S.Cheema, Advocate was having his contact number as also his residential address with him but he had not informed him about decision of suit of the respondent plaintiff against him on 13.03.2009. This version has neither been challenged nor questioned. Merely because petitioner-Malwinder Singh had not filed claim against his counsel for his alleged mistake in not informing him the decision against him, to the Bar Council, Chandigarh or with Bar Association, Fatehgarh Sahib, ipso facto is no ground to disbelieve version of the petitioner. Merely because Sh.A.S.Cheema, Advocate is mentioned to be his friend by petitioner MalwinderSingh also does not make the things worse for the petitioner, who has categorically mentioned that he did not receive any intimation about decision of case of the respondent-plaintiff against him.

12. Though conduct of the petitioner himself in not asking his counsel about the progress of the suit may be taken against him which has been questioned by the opposite side but the fact remains that the date of decision is 13.03.2009 and hardly any time had passed when he had even received summons on 1.10.2009 in respect of execution application preferred by the respondent-plaintiff. Even in cases 8 to 9 months date is

normal. This fact, by itself does not prove any malafides against the petitioner who has not gained anything by delayed filing of the appeal. He had received summons on 01.10.2009 and after engaging the counsel had filed the appeal, which also needed time for its preparation.

13. A perusal of the impugned judgment reveals that hyper technical approach has been adopted by the appellate Court in dismissing application for condonation of delay filed along with the appeal even when statement of applicant-petitioner is apparently innocent, genuine and thoughtful ; there is no material or evidence to dilute or whittle down the same.

14. Sequelly reversing the impugned judgment, accepting the petition, application of the petitioner for condonation of delay in filing the first appeal is allowed. Parties/counsel would appear before the court below on 26.03.2015. The appeal would be proceeded further for hearing as per law. It would be decided within 3 months.

(Dr.Bharat Bhushan Parsoon)
JUDGE

February 21st, 2015
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