

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

Civil Revision No.4771 of 2015 (O&M)

Date of decision: 18.08.2015

Bakhshish Singh

.....Petitioner

Versus

Atinder Pal Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. H.S. Bhullar, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the judgment/order dated 02.05.2014 passed by the Additional District Judge, Tarn Taran, whereby application filed by the appellant-petitioner under Section 5 of the Limitation Act for condonation of delay in filing the appeal, has been dismissed.

Initially, Bakhshish Singh etc.-petitioner filed a suit for declaration and permanent injunction to the effect that after the death of their mother-Mohinder Kaur on 06.12.1998, the plaintiffs had become owners of her estate as she had not left any Will with regard to the suit property.

Upon notice of the suit, the defendants-respondents admitted the ownership of Mohinder Kaur over the suit property and had stated that she (Mohinder Kaur) had executed a Will dated 25.06.1996 bequeathing her property in favour of defendant Nos.1 to 3, her grand children, in the presence of village Panchayat and other persons.

Execution of the aforesaid Will was proved by examining

attesting witness namely Virsa Singh (DW-2). The Will was held to be

genuine. On the basis of aforesaid Will, mutation of inheritance had been sanctioned in favour of defendant Nos. 1 to 3 by A.C. Ist Grade, Tarn Taran. The plaintiff-petitioner did not choose to file any appeal against the said mutation and it had become final. Santokh Singh had appeared in the witness box as DW-3 and stated that he had scribed the said Will. On the basis of above evidence, the Will in question was held to be not surrounded by suspicious circumstances. Ultimately, the suit filed by the plaintiff-petitioner was dismissed vide judgment dated 05.06.2008.

After dismissal of the suit, plaintiff-petitioner filed an appeal before the first appellate Court. Along with the said appeal, an application for condonation of delay in filing the appeal was also filed on 15.10.2011 after a gap of more than three years. The lower appellate Court, while deciding the said application, framed the following issues:-

1. Whether there is sufficient cause to condone the delay? OPA
2. Relief.

In order to prove his case, appellant-petitioner had appeared and tendered his affidavit as Ex.AW1/A. He deposed that he had authorized his sister Lakhwinder Kaur to file an appeal against the judgment dated 05.06.2008, but when he visited Tarn Taran on 13.09.2011, he came to know that no appeal had been filed by her. On the same day, he applied for certified copy of the judgment, which was delivered to him on 15.09.2011. Thereafter, he filed the appeal along with the instant application on 14.10.2011. However, in cross-examination, he admitted that he had been pursuing his case on each and every date. He also admitted that the case was decided on 05.06.2008 and he had taken certified copy of judgment thereafter. There was no explanation in the application for condonation of

he did not choose to file an appeal on 13.09.2011 when he visited Tarn Taran. In this background, the lower appellate Court dismissed the application as there was no sufficient ground to condone the delay.

The law on condonation of delay has been considered by a Coordinate Bench of this Court in **Bhagirath Vs. Rukna Devi and others**, Civil Revision No.8126 of 2014 (decided on 02.12.2014) wherein it has been observed that a litigant has to be vigilant to seek his remedy before the Court of law. In this judgment, reference was made to a judgment delivered by the Hon'ble Supreme Court in **Pundlik Jalam Patil (dead) by L.Rs. vs. Executive Engineer, Jalgaon, Medium Project and another**, 2008 (17) SCC 448, wherein it has been noticed that the law comes to the assistance for those who are vigilant and not for the sleepy. The object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. These are meant to see that the parties do not resort to dilatory tactics.

In the facts of the present case, once the appellant-petitioner has admitted that on 13.09.2011 he came to know from his counsel that no appeal had been filed by Lakhwinder Kaur, then why he did not choose to file an appeal immediately after 13.09.2011 as certified copy of the judgment had already been supplied to him and this fact had been admitted by him during his cross-examination.

In the light of the above discussion, no illegality, much less perversity has been found in the impugned order/judgment warranting interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

(RITU BAHRI)
JUDGE

18.08.2015