

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

Civil Revision No. 5991 of 2013 (O&M)

Date of decision : 7.4.2015

Lakhbir Singh

.. Petitioner

versus

Neetu Singh and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. N. S. Sodhi, Advocate, for the petitioner.
Mr. Puneet Kumar Bansal, Advocate, for respondent no. 1.
Mr. Karamjit Verma, Advocate, for respondent nos. 2 and 3.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 11.7.2013 passed by the learned Lower Appellate Court whereby on account of application for condonation of delay in filing the appeal having been dismissed on account of not leading evidence, the appeal was also dismissed as time barred. Revision was filed, as no decree-sheet was prepared by the learned Lower Appellate Court.

Learned counsel for the petitioner submitted that Jasbir Singh (deceased) son of predecessor-in-interest of the petitioner namely Saudagar Singh, was working as Fireman/ Diesel Assistant in Indian Railways. After his death on 1.12.2000, all service benefits were paid to the predecessor-in-interest of the petitioner. However, in a suit filed by respondent no. 1- Neetu Singh, who claimed herself to be the adopted daughter of late Jasbir Singh, the learned trial Court declared that respondent no. 1- Neetu Singh was the adopted daughter of deceased Jasbir Singh and on the basis of Will dated 22.8.1999 registered on 5.11.1999, she was entitled to receive entire terminal benefits of late Jasbir Singh.

Aggrieved against the judgment of learned trial Court dated 13.12.2011, Saudagar Singh (deceased) predecessor-in-interest of the petitioner filed appeal along with an application seeking condonation of

delay of 30 days in filing thereof. When notice in the appeal was issued, after service, counsel appearing for Neetu Singh- plaintiff stated before the Court on 11.9.2012, that she does not have any objection in case the application for condonation is allowed. The case was put up for reply to be filed by the other respondents namely the Railways. No evidence having been led, the evidence of the petitioner was closed by order of the Court and as a consequence, the application was dismissed and the appeal as well.

It was further submitted by learned counsel for the petitioner that once the contesting party namely the plaintiff had no objection for condonation of delay in filing the appeal, objections by the Railways where deceased Jasbir Singh was employed could not be raised as they were to pay the terminal benefits to any of the rightful claimant. Hence, the appeal should have been heard on merits.

Learned counsel for respondent no. 1/ plaintiff did not dispute the fact that a statement was made before the learned Lower Appellate Court on 11.9.2012 that she has no objection if the application for condonation of delay is allowed.

Learned counsel for respondent nos. 2 and 3 submitted that the Railways will abide by the order passed by the Court regarding disbursement of the terminal benefits due on account of death of Jasbir Singh, who was employed with the Railways. He further submitted that since the contesting party did not have any objection for condonation of delay in filing the appeal before the learned Lower Appellate Court, the Railways cannot have any objection for that.

Heard learned counsel for the parties and perused the paper book.

Against the judgment and decree of the trial Court dated 13.12.2011 in a suit filed by respondent no. 1/ plaintiff claiming terminal benefits of late Jasbir Singh, who was employed with Indian Railways, the predecessor in interest of the petitioner filed appeal before the learned Lower Appellate Court. The suit was filed with the plea that she is the adopted daughter of late Jasbir Singh and is entitled to the terminal benefits in terms of the Will dated 22.8.1999 registered on 5.11.1999 executed in her favour. The appeal filed by the predecessor-in-interest of the petitioner

namely, Saudagar Singh, father of deceased Jasbir Singh was delayed by 30 days. The application for condonation of delay was filed. After notice, counsel for respondent no. 1/plaintiff stated before the Court on 11.9.2012 that she has no objection to the condonation of delay in filing the appeal. However, still the case was kept pending and issue was framed to find out sufficient ground to condone the delay as the other respondents namely Indian Railway where late Jasbir Singh was employed, had not given no objection. Railway was not the contesting respondent as such they were bound to release the terminal benefits due on account of death of late Jasbir Singh to any of the rightful claimant.

Considering the aforesaid factual matrix, where the contesting party did not have any objection for condonation of delay in the appeal filed by the predecessor-in-interest of the petitioner namely late Saudagar Singh, the order of rejection of the application seeking condonation of delay, in my opinion, was illegal. Hence, the order dated 11.7.2013 is set aside and the matter is remitted back to the learned Lower Appellate Court to be dealt with on merits. The parties are directed to appear before the District Judge, Ferozepur, on 22.4.2015 for further proceedings. The District Judge, Ferozepur may either keep it with him or entrust the same to any other competent Court.

The revision stands disposed of accordingly.

7.4.2015
vs

(Rajesh Bindal)
Judge