

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 7588 of 2015 (O&M)

DATE OF DECISION : November 16, 2015

Ram Lubhaya @ Dhan Raj

..... PETITIONER(S)

VERSUS

Sita Ram (deceased) through LRs

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashu Kaushik, Advocate, for the petitioner.

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- 1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO**
- 2. To be referred to the Reporter or not? YES**
- 3. Whether the judgment should be reported in the digest? YES/NO**

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ARUN PALLI, J. (Oral)

Eviction petition preferred by the petitioner-landlord was dismissed by the Rent Controller, Hoshiarpur, vide order dated 11.02.2011. As an appeal preferred against the said order was barred by time, Appellate Authority, vide its order dated 10.03.2015, dismissed the application moved by the petitioner under section 5 of the Indian Limitation Act, 1908, and,

consequently, even the appeal. The conclusion arrived at by the appellate authority in support of its order, reads as thus:-

“13. The applicant has come to the court with a specific plea that on account of his sickness, he was unable to contact his counsel. There is no worth name evidence to that aspect. Although some prescriptions have been placed on record but all these prescriptions are of outdoor patient. Nowhere it is mentioned that applicant remained admitted in some hospital. Just bringing two persons who deposed in the court that the applicant was sick and as such he was not able to come to the court is not sufficient to discharge the burden. A perusal of the statements of these witnesses would go to show that neither of them is medical expert, one of them is auto rickshaw driver and other person is just neighbourer and the cross examination of the witnesses go to show that they are not aware of any fact and the testimony of these witnesses does not prove the case of applicant in any manner.

14. Not only, applicant could not bring cogent evidence on the file even a careful perusal of this application under section 5 of the Limitation Act go to show that vague application has been filed. It is not mentioned as to how much is delay which the applicant wants to get condoned and the period in which the applicant remained sick. Even date has not been mentioned as to when he contacted his counsel and came to know regarding passing of judgment. The vague assertions has been made that a few days ago, he met his counsel. While filing application under section 5 of Limitation Act, applicant is required to accurately account for the reasons as to why he could not come to the court within prescribed period and it has not been done. Although law of

condonation is quite liberal and the courts usually condoned delay so that matter could be decided on merit but the court cannot abrogate the law of land which postulate that there has to be limitation in filing the lis so that there is end to the dispute and the verdict gets finality. The law requires sufficient cause to be proved on the file. In case titled as Esha Bhattachaljee Vs. Managing Committeer reported vide 2013(12) Supreme Court of Cases. 649, Hon'ble Supreme Court of India has elaborately dealt with the subject of condoning the delay under the provisions of section 5 of the Limitation Act. Reiterating the principle laid down earlier, in this judgment further guidelines have been laid down and it has been mentioned that the application for condonation of delay should be drafted with careful concern and not in a half hazard manner with notion that courts are required to condone the delay. It has been held that application for condonation of delay should not be dealt with in a routine manner and the most important guideline is that increasing tendency to perceive delay as a non serious matter requires to be curbed within legal parameters. In the latest pronouncement of the Hon'ble Supreme Court of India in case titled as Brijesh Kumar Vs State of Haryana. reported vide 2014(3) Civil Court Cases. 470, Supreme Court of India has held that court has to draw a distinction between delay and inordinate delay. Sufficient cause is a condition precedent for exercise of discretion of the court for condoning, the delay and most importantly it has been held that when mandatory provision is not complied with, delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds only.

15. Keeping in view above said guidelines laid down

and looking to the facts of the present case, this court is of the considered opinion that applicant has not been able to explain as to why delay of about 2 years have taken place in filing the present appeal coupled with the factors that documents showing that he had been pursuing other litigation during that period further weaken the case of applicant. In view of the same this issue goes against the applicant and in favour of respondent."

Concededly, the eviction petition preferred by the petitioner was dismissed on 11.02.2011. Exhibit R-1 is a certified copy of the application dated 03.02.2012, moved by one Sumer Chand, in a Rent Petition No.75 of 2007, titled as 'Ram Lubhaya vs. Sumer Chand'. Exhibit R-2 is the reply filed by the petitioner to the said application on 05.03.2012, through Sh.Ajay Bhalla, Advocate, who also happened to be his counsel before the Rent Controller. Petitioner conceded in his cross-examination that the reply dated 05.03.2012 was signed by him. Exhibit R-4 is a certified copy of Vakalatnama, in yet another matter, in favour of Sh. J.R. Gupta and Shri Varinder Gupta, Advocates, which shows that the same was signed by the petitioner on 07.11.2012. Meaning thereby, even post passing of order dated 11.02.2011, petitioner had been regularly visiting the courts and was in touch with his counsel before the Rent Controller. Not just that, he was even engaging counsel and filing replies, etc. That being so, his version that he remained seriously ill and, therefore, could not contact his counsel to ascertain the fate of the eviction petition, is wholly false. The application for condonation of delay in filing the

appeal against the order passed by the Rent Controller dated 11.02.2011 was moved on 14.01.2013 i.e. after a delay of almost 2 years. Further, the application moved by the petitioner for condonation of delay was wholly vague, uncertain and lacked material particulars as even this was not indicated as to how much was the delay the accompanying appeal suffered from. Likewise, even the period during which the petitioner remained purportedly ill was not indicated either. No date was mentioned as to when he contacted his counsel and acquired knowledge qua the order dated 11.02.2011. Apparently, petitioner had been extremely negligent and remiss in pursuing his cause and he consciously did not choose to file an appeal immediately after passing of the order by the Rent Controller dated 11.02.2011. Subsequent institution of the appeal, was thus an after thought.

Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the Appellate Authority was either contrary to the position on record or was erroneous in law.

That being so, no interference is warranted in exercise of revisional jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949. Petition being devoid of merit is, accordingly, dismissed in limine.

NOVEMBER 16, 2015
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(ARUN PALLI)
JUDGE