

CR No. 85 of 2013 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 85 of 2013 (O/M)
Date of decision : 24.12.2015

Amar Singh

..... Revisionist

Versus

Lakhvir Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sunil Chadha, Senior Advocate, with,
Ms. Palvi Singh, Advocate, for the revisionist.

Mr. Gulzar Mohd., Advocate, for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Impugned in the present revision is the order dated 26.2.2010 (Annexure-P-3), passed by the learned Civil Judge (Junior Division), Khanna, whereby an application filed under Section 5 read with Section 14 of the Limitation Act for condonation of delay in filing the application under Order IX Rule 13 CPC for setting aside ex-parte judgment and decree dated 7.2.1996 was

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dismissed being timed barred. Also impugned is the order dated 31.10.2012, passed by the learned Additional District Judge, Ludhiana, whereby the appeal against the said order was also dismissed.

Undisputedly, a suit for possession by way of specific performance of land measuring 9 kanals 9 marlas, situated within the revenue estate of village Rattanheri, Tehsil Khanna, District Ludhiana, was filed against the present revisionist in the Court of the then Additional Senior Sub Judge, Khanna. It was averred in the said suit that defendant (revisionist herein) had agreed to sell the said land to the plaintiff (respondent herein) for Rs. 73,237/-, vide agreement to sell dated 14.6.1990. The sale deed was to be executed on or before 1.6.1991. It was further claimed that the sale deed was not executed by the defendant/revisionist. It also comes out from the perusal of the lower Court file that the defendant/revisionist in the said suit is stated to have been served through registered AD letter, but he did not appear and was proceeded against ex-parte on 18.4.1995. Accordingly, an ex-parte judgment and decree was passed on 7.2.1996. The present revisionist, who was defendant in the said suit, filed an application under Order IX Rule 13 read with Section 151 CPC, for setting aside the said ex-parte judgment and decree. Alongwith the said

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application, an application under Section 5 read with Section 14 of the Limitation Act for condonation of delay was filed on 27.5.1997, which was dismissed.

It also comes out that the lower Court had framed the following issues for disposal of the main application filed under Order IX Rule 13 read with Section 151 CPC :-

- “1. Whether the order dated 7.2.96 is liable to be set aside ?
OPP
2. Whether the application is not maintainable ? OPR
3. Whether the application is time barred ? OPR
4. Relief.”

The application filed under Order IX Rule 13 read with Section 151 CPC was dismissed, vide order dated 27.8.2003 by the then Civil Judge (Junior Division), Khanna. In the appeal, the learned Additional District Judge (A), Fast Track Court, Ludhiana, vide order dated 11.9.2004, set aside the said order and directed the trial Court to first decide the application filed under Section 5 of the Limitation Act and thereafter depending upon the decision of application under Section 5 of Limitation Act, decide the application under Order IX Rule 13 CPC afresh. It was in this way, the said application was decided.

I have heard the learned counsel for the parties and have also carefully gone through the file and lower Court file as well.

The lower Court, while dismissing the application, made the following observations :-

“7. After hearing learned counsel for the parties, I have perused the file. Section 5 of the Limitation Act provides for condonation of delay for filing application. Article 123 of the Limitation Act provides for period of limitation of 30 days for an application for getting set aside ex-parte judgment and decree. The relevant time for start of limitation is from the date of knowledge. But in the present case the application was filed on 27.5.1997 but applicant had already appeared in the execution of decree dated 10.2.1997. There is delay of 105 days. The applicant has to show sufficient cause of delay of each day. The applicant has taken the plea that after appearing on 10.12.1997, he consulted his counsel and his counsel advised him to get the certified copies of the judgment and decree and he applied for the same on 3.3.2007 and get the certified copy of the same on 24.5.2009. Therefore, relevant time is 24.5.2007, but applicant has to explain delay of each day. Relevant time was from date of knowledge i.e. 10.2.1997. Even if it is presumed for the sake of arguments and if the provisions is under Section 5 of the Limitation Act is most liberally interpreted and it is presumed that being the simpleton person it took about 22 days to the applicant to understand the whole scenario we may take 3.3.1997 as relevant time but even after that copy was prepared on 6.3.1997 but the applicant get the certified copy on 24.5.1997. The law on the point is very much clear that the time from the applying for certified copy till preparation of the certified copy is to be excluded from the limitation. Therefore, the relevant time is 6.3.1997. The present application filed on 27.5.1997 i.e. after 81 days. The limitation for filing the application is 30 days. Remaining 50 days are unexplained by the applicant. Therefore, present application is dismissed.”

The findings were upheld in appeal. Both the Courts below have dismissed the application on the ground that the present revisionist had appeared in the execution proceedings on 10.2.1997. According to him (revisionist), his counsel advised him to get the certified copy of judgment and decree to apply for setting aside the same. The certified copy was applied on 3.3.1997, which was ready on 6.3.1997, but was collected on 24.5.1997. The application was filed on 27.5.1997. Both the Courts below have held that each day of delay has to be explained, but the same has not been explained.

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The signatures of the defendant/revisionist on various documents shows that he appears to be semi-literate.

Now, the question would arise whether the technical view of the matter is to be taken or the broader principle of law and interest of justice are to get priority.

Learned counsel for respondent has relied upon the authority of the Apex Court in P.K. Ramachandran Versus State of Kerala, 1997 (4) RCR (Civil) 242 to press that the law of limitation should be applied. He has also relied upon the authority of this Court in Balwinder Singh Versus State of Punjab, 2003 (1) RCR (Civil) 481 to press that since the delay has not been satisfactorily explained, therefore, the application for condonation of delay should not be allowed.

On the other hand, the learned senior counsel for the revisionist has relied upon the authority of this Court in Jagjit Singh Puri Versus Hari Dev Bansal, arising out of CR No. 1028 of 2002, decided on 5.12.2007 and relied upon the following observations made by the Court :-

“9. In **Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao**, 2002 (2) RCR (Civil) 337 (SC) the principle of law laid down, was that the term ‘sufficient cause’ in Section 5 of Limitation Act, and Rule 9 of Order 22 CPC, must receive a liberal construction, so as to advance substantial justice. When no negligence or inaction or want of bona fide is imputable to a party condonation of delay is a rule, and refusal an exception-No doubt, a valuable right accrued to the other party, should not be lightly defeated by condoning delay, in a routine manner. However, by taking a pedantic and

hyper technical view, explanation furnished, should not be rejected when stakes are high and arguable points are involved- The Courts have to strike a balance. When the appeals are pending for long time, the parties are not expected to keep constant watch of the events. The Rule of limitation is not meant to destroy the rights but is to keep the cause alive, for such prescribed time and is meant to see that the parties do not resort to dilatory tactics. In **State of Nagaland Vs. Lipok AO** 2005 (3) SCC 752, the principle of law, laid down was to the effect that the Courts should be liberal in condoning the delay. Expression "every day's delay does not mean that a pedantic approach should be adopted. It was further held in the said authority that unless want of bona fides or inaction or negligence is proved to deprive a party of the protection of Section 5, the application must not be thrown out. It was further held that mistake of the Counsel, by itself, is always sufficient cause, for condonation of delay. It is always a question, whether the mistake was bona fide or was merely a device, to cover an ulterior purpose. If the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Expression "sufficient cause" is adequately elastic. The Court is to apply the law in a meaningful manner which subserves the ends of justice, that being the life-purposes for the existence of the institution of Courts. Court should not adopt an injustice oriented approach, in rejecting the application for condonation of delay. In **N. Balakrishnan Vs. M. Krishnamurthy** AIR 1998 Supreme Court 3222, the delay of 883 days, in filing the appeal was condoned, on the ground, that the same had been caused due to the failure of an Advocate, to inform the appellant, as well as failure to take action.

10. It must be remembered that, in every case of delay, there can be some lapse, on the part of the litigant concerned. That alone is not enough to turn down his plea, and to shut the door, against him. If the explanation does not smack of mala fides, or it is not put forth, as a part of dilatory strategy the Court must show utmost consideration, to the suitor. But when there is reasonable ground to think that the delay was occasioned, by the party, deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning delay, the Court should not forget the opposite party altogether. It must be borne, in mind, that he is a loser, and he too would have incurred quite a large litigation expenses. It would be a salutary guideline, that when the Court condones the delay, due to laches, on the part of the applicant, it shall compensate the opposite party, for its loss."

The learned senior counsel for the revisionist has further argued that in the main case, the ex-parte proceedings on the basis of service through registered letter are not acceptable and no attempt has been made to effect personal service. However, that

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question is not in issue before this Court. Admittedly, the defendant is a semi-literate. He appeared in the execution proceedings on 10.2.1997. He claims that he was not served in this case. The said controversy is still to be decided. However, he applied for certified copy on 3.3.1997 and despite the fact that it was ready on 6.3.1997, the same was collected on 24.5.1997. The learned senior counsel for the revisionist contends that it was left to the counsel to collect the certified copy and only when the clerk of the counsel collected the certified copy, he was informed and thereafter he filed the application.

It is not a denying fact that most of the litigants depend upon the advise given by the counsel and for many other miscellaneous clerical works, they completely depend upon the clerk of the counsel. Therefore, the possibility is there that the clerk of the counsel for the revisionist did not collect the certified copy, resulting in delay. It has been further contended that the only land measuring 9 kanals 9 marlas, owned by the present revisionist, is alleged to have been sold through the agreement to sell dated 14.6.1990. The revisionist also denies the signatures on the said agreement to sell.

I am of the view that the interest of justice requires that in this case the matter should be decided on merits. The technicalities of law of limitation should not come in way of dispensation of justice.

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Therefore, the present revision is allowed. The delay in filing the application under Order IX Rule 13 CPC stands condoned, subject to payment of Rs. 1,000/- as costs, to be deposited in the District Legal Aid Fund, Ludhiana. The case is remanded back to the lower Court for fresh decision on merits on the remaining issues.

Accordingly, the present revision is allowed.

(KULDIP SINGH)
JUDGE

24.12.2015
sjks