

CWP No. 15711 of 2014

Date of decision: 8.12.2015

Sukhjinder Singh and others

.....Petitioner

versus

Financial Commissioner Punjab and others Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.S.Dhandi, Advocate
for the petitioners.

Mr. V.Ramswaroop, Addl.AG,Punjab.

Rakesh Kumar Jain, J.(Oral)

This petition is filed to challenge the order dated 30.05.2014 passed by the Financial Commissioner(Animal Husbandry), Punjab, Chandigarh whereby revision petition filed by the petitioners has been dismissed on the ground of delay.

In short, respondent No. 3 filed an application under Section 111 of the Punjab Land Revenue Act, 1887 seeking partition of the joint holding. In the said application, no personal service was effected upon the petitioners rather they were served by way of publication.

According to the petitioners, respondent No. 3 had given their address of the village whereas they are residing outside the village as mentioned in Memo of Parties in the petition. Petitioners No. 1 to 4 are residing at Mohali and petitioner No. 5 at Faridabad. Since there was no contest, therefore, respondent No. 3 got the major chunk of the land on

the road side which is valuable in nature. Petitioner challenged the Sanad Takseem by way of revision along with an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 427 days alleging therein, that they were proceeded against ex parte, had no knowledge about the pendency of the petition and came to know about it in the month of January, 2014 when the Revenue Officer came to the village to demarcate the land as per partition.

The Financial Commissioner did not accept this plea and dismissed their revision petition only on the ground of delay on the ground that reasons assigned by the petitioners not fall within the definition of “sufficient cause”. In this case, after notice was issued, efforts were made to serve private respondents No. 6 and 7, they were duly served but nobody has put in appearance on their behalf. Respondents No. 3 to 5 were served by substituted service on an application filed by the petitioner under Order 5 Rule 20 of the CPC. Despite service, respondents No. 3 to 5 also did not appear. Therefore, they were proceeded against ex parte.

The question involved in this case is only to decide by this Court *“as to whether order passed by the Financial Commissioner, dismissing the application of the petitioner for condonation of delay is justified”?*

There is no dispute that in the proceedings before the Revenue Court, Asstt. Collector 2nd Grade, the petitioner was not present because they were not served personally for the application filed by

respondent No. 3 for seeking partition. Rather their service was sought to be effected by way of publication which in fact was not even complete. The Asstt. Collector 2nd Grade appears to have acted in a hurry and considered the present petitioners to have been served and suggested the mode of partition which was ultimately allowed in the absence of any contest and on the basis of mode of partition. The Sanad Takseem has been prepared in which respondent No. 3 has taken the maximum advantage of taking the land on the road side which is more valuable than the other land.

The Financial Commissioner while dismissing the application should have taken into consideration all the facts as it has been held by the Supreme Court in the case of **A.Nag & Anr vs. Mst.Katiji & Ors.**, AIR 1987 SC 1353 that a party would not be benefitted to register his case late if it has merit in it. The case of the petitioner appears to be meritorious. Therefore, prima facie the reason assigned in the application that they came to know about the partition in the month of January, 2014 when the Revenue Officer came to the village to demarcate the land as per partition and had filed the revision petition immediately seems to be correct.

Accordingly, the order dated 30.05.2014 passed by the Financial Commissioner(Animal Husbandry), Punjab, Chandigarh is hereby set aside. The application filed by the petitioners for condonation of delay is allowed and the matter is remanded back to the Financial Commissioner to decide the revision petition after giving notice to the respondents on merit.

Parties are directed to appear before the Financial
Commissioner on 7.01.2016.

8th December, 2015

Shivani Kaushik

[RAKESH KUMAR JAIN]

JUDGE