

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

**RSA No.3664 of 2011 (O&M)
Date of decision: 21.08.2015**

Des Raj and others

... Appellants

Vs.

State of Haryana and another

... Respondents

RSA No.3673 of 2011 (O&M)

Harditta Ram

... Appellant

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. S.K.Jain, Advocate
for the appellants (in both appeals).

Mr. Ravi Pratap Singh, AAG, Haryana.

AMIT RAWAL J. (Oral)

C.M.No.10359-C of 2011 in RSA No.3664 of 2011

The application under Section 5 of the Limitation Act, for condonation of 2059 days in filing the appeal has been filed, which is accompanied by an affidavit.

Reasons for making delay in filing the appeal are that

after the appeal filed against the judgment and decree of the trial Court was also dismissed by the lower Appellate Court on the ground of maintainability of the suit, the applicants, being illiterate and rustic person sought the advice of the counsel of the trial Court as to whether the applicants should file an appeal before Hon'ble High Court or not. The counsel advised the applicants that there is very little scope of interference in second appeal. Subsequently, the similarly situated persons had got the relief from a Co-ordinate Bench of this Court in RSA No.2849 of 2001 titled as State of Haryana and others vs. Hakam Chand and others, decided on 27.04.2009. After acquiring the knowledge of the aforementioned judgment, in the month of May, 2011 when the applicants came to the office of the Block Development and Panchayat Officer, Sirsa for purchasing quality seed of Jawar for Kharif, they also decided to file regular second appeal and in this manner, the aforementioned delay has occurred.

In support of aforementioned averments made in the application, learned counsel for the appellants relied upon the judgment of Hon'ble the Supreme Court in **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others** (2013) 12 Supreme Court Cases 649, laying down the principles for condonation of delay.

From the contents of the application, it would be presumed that the applicants were lacking in bona fides. Accordingly,

for the reasons stated in the application, which is duly supported by an affidavit and in view of the ratio decidendi culled by the Hon'ble Supreme Court in Esha Bhattacharjee's case (supra), delay of 2059 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3664 of 2011 (O&M)

RSA No.3673 of 2011 (O&M)

Mr. S.K.Jain, learned counsel appearing on behalf of the appellants submits that the suit for declaration to the effect that the plaintiffs are entitled for compensation of the suit land described in the head note of the suit, along with consequential relief of mandatory injunction has been dismissed by the trial Court and upheld by the lower Appellate Court on the premise that the suit is not maintainable. The said findings are not in accordance with law, much less, erroneous and perverse. The findings rendered by the Courts below that appellant-plaintiffs ought to have filed a suit for damages is capricious, much less, fallacious. He further submits that in identical matter, i.e, in **RSA No.2849 of 2001 titled as State of Haryana and others vs. Hakam Chand and others** decided on 27.04.2009, a Co-ordinate Bench of this Court, while disposing of 19 appeals, had an occasion to ponder upon the question of maintainability of the suit, by holding that the suit was maintainable, dismissed the appeal filed by the State of Haryana and others.

Mr. Ravi Pratap Singh, learned Assistant Advocate

General, Haryana, submits that no doubt the State had challenged the findings, wherein, identical relief has been given by a Co-ordinate Bench of this Court, but the fact remains, that the appellants have not been able to prove that the land was acquired and no substantial questions of law arise to be adjudicated by this Court, for decision of the regular second appeals.

I have heard learned counsel for the parties and appraised the judgments and decrees of both Courts below.

The trial Court had rendered a finding that the land of the appellants had been acquired, but, non-suited them for not filing of suit for damages or mandatory injunction. In my view, as well as, in view of the decision dated 27.04.2009 rendered by a Co-ordinate Bench of this Court in the Regular Second Appeal No.2849 of 2001, the suit is maintainable. While taking into consideration all the factors, the Co-ordinate Bench had noticed that compensation of ₹1,00,000/- per acre, had been awarded to the persons, whose, land had been acquired and their land had come in between flood embarkment which resulted into diminishing the value, in essence, the value of the same has considerably been reduced. Accordingly, in my view, the present appeal involves the following substantial questions of law:-

- i) Whether the respondent-State, being a Social Welfare State, can take the technical plea of maintainability in frustrating the rightful and legal claim of*

its citizens or not?

ii) Whether the plaintiffs-appellants are entitled to the compensation on account of the decision of this Court in RSA No.2849 of 2001 decided on 27.04.2009 titled as State of Haryana and others vs. Hakam Chand and others or not?

In view of what has been observed above, the appeals are allowed. The aforementioned substantial questions of law are answered in favour of the appellant-plaintiffs and against the respondents-defendants. The appellants are entitled to compensation of ₹1,00,000/- per acre. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 21, 2015
savita