

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3787-2011 [O&M]

Date of Decision : January 27th, 2015

Joga Singh

.. Appellant

Versus

Sat Pal Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Ashok Kumar Chauhan, Advocate,
for Mr. Arvind Singh, Advocate,
for the applicant-appellant.

Mr. G.S.Punia, Senior Advocate,
for Ms. Mandeep Kaur, Advocate,
for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

At the time of filing of this R.S.A. against the judgment and decree dated 29.1.2010 of Additional District Judge, Kurukshetra, Joga Singh, applicant-appellant had moved an application, bearing Civil Misc. No.10794-C of 2011, under Section 5 of the Limitation Act for condonation of delay of 481 days in filing the appeal. It is claimed that the appellant is a driver by profession and is not an educated person and, thus, he could not understand the communication of his counsel in the first Appellate Court about the decision of his first appeal. It was only on 18.8.2011 that the appellant was informed by the revenue officials that the possession of the land in dispute is to be delivered to respondent – Sat Pal Singh, that he came to know about the dismissal of his appeal on 29.1.2010.

2. This application has been strongly contested by the respondent, claiming that there is no bona fide ground or excuse available with the applicant-appellant and the application for condonation of delay is merely a camouflage to further delay and dilate the matter.

3. Hearing has been provided to learned counsel for the parties.

4. Perusal of the paper book reveals that the suit of the applicant-appellant had been dismissed by the lower Appellate Court on 29.1.2010. The Regular Second Appeal was to be preferred on or before 29.4.2010. It is very relevant to mention here that execution was preferred by the Decree Holder – Respondent here, wherein the applicant-appellant – Judgment Debtor had duly been appearing. During the course of arguments, it has not been denied by the counsel for the appellant that the appellant had been appearing in the execution proceedings. Perusal of orders dated 31.7.2010, 09.09.2010, 04.05.2011, 11.06.2011, 08.08.2011 and 01.10.2011 of the Executing Court, leave no manner of doubt that the Judgment Debtor had been appearing all along in the said proceedings and knowledge of decree in appeal became available to the applicant-appellant on 31.7.2010.

5. This Regular Second Appeal was preferred on 26.08.2011, for which there is no satisfactory or plausible explanation. There is huge delay of 481 days which remains completely unexplained particularly when the Judgment Debtor is appearing in the execution proceedings and is not even challenging the decree under execution.

6. It was much later that the Regular Second Appeal was preferred in this Court. It is rather, a clear case of misuse of process of the Court where the Judgment Debtor had been appearing in the execution proceedings and had not challenged the impugned judgment of the first Appellate Court.

7. On the one hand, the applicant-appellant is seeking time to comply with the decree under execution and had been making such overture in the execution proceedings but on the other hand, acting smartly, filed an application for stay and challenged the said decree which is highly belated.

8.

From the perusal of entire record, it is a clear case where the

applicant-appellant had taken the proceedings very casually and has not been able to explain huge delay of 481 days in filing the appeal. Sequelly, CM No.10794-C of 2011 seeking condonation of delay is dismissed.

Main Appeal

9. Since application seeking condonation of delay has been dismissed, the appeal having been filed beyond the period of limitation, is also dismissed as such.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

January 27th, 2015
som

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? yes