

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.2115 of 2014 (O&M)

Date of Decision: July 02, 2015

Dargah Char Qutub Hansi and another

.....Appellants

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Dinesh Ghai, Advocate, for the appellants.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

This letters patent appeal is directed against the order dated 11.11.2014 whereby learned Single Judge dismissed the application seeking condonation of 3446 days delay in filing the Review Application seeking recall of the order dated 21.08.2004 whereby the appellants' writ petition was dismissed for non-prosecution.

[2] The facts may be noticed briefly.

[3] The first appellant claims to be a Dargah at Hansi allegedly managed by appellant No.2. The writ petition says that though the Dargah is a historical monument but its authentic history is not available.

[4] The afore-mentioned property was declared as 'evacuee property' under the Administration of Evacuee Property Act, 1950 and after a protracted litigation, it emerges

that the Settlement Commissioner-cum-Custodian General, Haryana, rejected the appellants' claim of it being a 'wakf property' and held it to be an 'evacuee property' only.

[5] The aggrieved appellants approached this Court through CWP No.2427 of 1985 challenging the above-mentioned order dated 10.05.1982 and for restoration of ownership in favour of Dargah.

[6] The writ petition was listed for final hearing as per its turn but due to non-appearance of appellants or their counsel it was dismissed for non-prosecution by a learned Single Judge vide order dated 21.08.2004 which reads as follows:-

“..... Neither the petitioners nor their counsel has put in appearance. It appears that the petitioners are no longer interested in the prosecution of their case.

Dismissed for non-prosecution.”

[7] After almost 10 years, the appellants on 27.02.2014 moved Civil Misc. No.5127 of 2014 for recalling the order dated 21.08.2004. Another application under Section 5 of the Limitation Act seeking condonation of delay was also moved.

[8] From the contents of these misc. applications, it is revealed that besides repeating the averments made in the writ petition or reproduction of the orders passed by this Court at the time of preliminary hearing, there were some misc. applications moved in the years 1999 and 2002 also. The appellants were thus in contact with their counsel till the years 2002.

[9] Thereafter, in para No.11 of the application(s), it is alleged that the appellants “remained under bonafide and

genuine impression that the case was lying admitted and pending consideration before this Court since the year 1985 and it was only on 16.01.2014 when the appellants got panicky and got confirmed about the status of the civil writ petition and came to know that the case already stood dismissed for non-prosecution.....” It is further claimed that a new counsel was engaged through whom the application for restoration was filed.

[10] Though the appellants have today filed an affidavit to wriggle out of the previous averments, but concededly in para No.13 of the application dated 27.02.2014, they accused their previous counsel alleging as follows:-

“..... That the petitioners/applicants have never been informed by their earlier counsel till date either about the listing of the case in regular hearing or about the civil writ petition having been dismissed for non-prosecution vide order dated 21.08.2004. Hence, the petitioners/applicants cannot be allowed to suffer for the mistakes not committed by them.....”

[11] Learned Single Judge has vide order dated 11.11.2014 dismissed these applications observing that the explanation furnished for the condonation of delay was totally unbelievable and there were some undisclosed and unexplained reasons behind the inordinate delay in seeking restoration of the petition. Learned Single Judge further viewed that on account of excessive delay, the rights of opposite party stood crystalized and the same cannot be unsettled at this stage.

[12] We have heard learned counsel for the appellants on different dates and with a view to satisfy ourselves with reference to the appellants' bald assertion that their counsel did not inform them at any stage about listing of the case, we requested Mr.I.K.Mehta (now a senior counsel) to assist the Court on this factual aspect.

[13] Mr.I.K.Mehta, Senior Advocate has very categorically stated that the appellants were duly informed but they did not bother to pursue the case.

[14] We are inclined to accept the statement of the previous counsel for more than one reasons. Firstly, the appellants were in contact him till the year 2002-2003 when they moved applications for bringing legal representatives on record. It is unbelievable that a counsel who took all necessary steps till then, would suddenly forget his duty to inform the client regarding listing of the case for final hearing. Secondly, mere engagement of a counsel does not fully absolve a litigant from being reasonably vigilant to enquire, may be occasionally, the status of his case. Thirdly, the 'source of information' as to how the appellants suddenly came to know about dismissal of their writ petition on 16.01.2014 is conspicuously missing in the application.

[15] Public properties are the softest targets for encroachers or usurpers. The second appellant appears to be driven by such a motive. It is also quite possible that 2nd appellant had earlier re-conciled but an invisible force has now surfaced with a calculated design to whom the 2nd respondent has lent his shoulders. The explanation put-forth by the appellants does not inspire any confidence, rather creates doubts on their bonafide.

[16] For the reasons afore-stated, we do not find any merit in this appeal.

Dismissed.

[SURYA KANT]
JUDGE

July 02, 2015
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[P.B.BAJANTHRI]
JUDGE