

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

124

Regular Second Appeal No.159 of 2015 (O&M)
Date of Decision: October 12, 2015

Darshan Singh Grewal

...Appellant

Versus

Kasturi Lal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.B. Raheja, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.435-C of 2015 and RSA No.159 of 2015

Prayer in this application is for condonation of delay of 1298 days in filing the appeal.

2. It is the contention of the counsel for the applicant-appellant/defendant that the applicant engaged Mr. Sandeep Arora and Mr. Deepak Arora as his Advocates, who filed the Regular Second Appeal on 21.03.2011 bearing diary No.645905. Thereafter no information was given to the applicant by his counsel. Applicant is a Non-Resident Indian and a permanent resident of Canada and, therefore, could not pursue the matter. The applicant approached his counsel but no satisfactory reply was given by them to him and no intimation with regard to the outcome of the appeal was also given. This was despite he having paid the entire fee along with the Court fee and other charges to his counsel. Every time he enquired, he was intimated that the appeal is pending. The applicant visited India and enquired about the outcome of his appeal when he was informed that an objection was raised and the appeal was returned to the counsel. The

counsel for the applicant did not return the original brief and he left with no alternative, obtained certified copy afresh to file the appeal, which has been filed now by engaging another counsel, which has resulted in delay of 1298 days in filing the appeal.

3. Perusal of the above application would not explain the delay as such on the part of the applicant as no details whatsoever have been mentioned, specially with regard to the date on which he went back to Canada and enquired about the pendency of the case, the date on which he returned back to India, his visit to the earlier counsel engaged by him and even the date on which he enquired from the High Court about the fate of his appeal, the date on which he was advised to get a certified copy of the judgment, the date of application for obtaining copy, the preparation, the receipt thereof, the engagement of the present counsel, the time spent in preparing the appeal till the filing of the appeal. In the absence of these details, the assertions of the applicant, cannot be accepted, specially when there is an inordinate unexplained delay of 1298 days in filing the appeal. Even the action, which has been taken/initiated against the counsel, who had been earlier engaged, who according to the assertion of the applicant, had filed the appeal and have not pursued the same nor have they returned the case file, has been mentioned. The *bona fides* of the applicant, thus, cannot be said to be over board.

4. In view of the above, the present application cannot be accepted.

5. I have even heard the counsel for the appellant-defendant on merits but am unable to accept his contentions as his primary argument is that the appellant-defendant is not an agriculturist and, therefore, could not

have been advanced loan by the respondents-plaintiffs, who are commission agents and they generally advance loan only to those persons, who sell their crops to them. In any case, he contends that the appellant-defendant is a Non-Resident Indian and had no paucity of funds, which would have forced him to take loan of ₹10,00,000/- and ₹10,000/- from the respondents-plaintiffs. Assertion has also been made that the entries made in the account books are forged and fabricated. In fact, he asserts that the entries are not even genuine and so are his signatures affixed thereon. He has asserted that an application for leading additional evidence has been moved by him i.e. CM No.6130-C of 2015 under Order 41 Rule 27 read with Section 151 CPC for permission to produce copy of the forensic report dated 20.05.2015 of the Handwriting Expert, who on comparison of the documents, had opined that the questioned signatures have not been written by the appellant-defendant. He, on this basis, asserts that the findings recorded by the Courts below cannot sustain and deserve to be set aside.

6. Dealing first with the application moved by the applicant-appellant/defendant for additional evidence i.e. CM No.6130-C of 2015, suffice it to say that a similar application moved by him earlier before the Lower Appellate Court has already been dismissed by the said Court. That apart, at this belated stage, the present application cannot be accepted, specially when the report, which is now being sought to be placed on record, is dated 20.05.2015. Nothing has been mentioned in the application indicating that such a recourse, as has now been adopted by the applicant-appellant/defendant, could not have been taken by him at an earlier stage when the trial was in progress, specially when he has taken the plea that the entries made in the account books are forged and fabricated and has also

denied his signatures thereon.

7. This application, therefore, cannot be accepted and is rejected.

8. The argument raised by the learned counsel for the appellant-defendant with regard to the entries being forged and fabricated cannot be accepted as the respondents-plaintiffs duly proved on the basis of the evidence, which has been produced before the trial Court where the scribe, the accountant of the firm had appeared as PW-2, Handwriting Expert appeared as PW-3, who proved his report, where he has mentioned that the signatures are that of the appellant-defendant on the account books, which cannot be faulted with. It may not be out of way to mention here that not only an amount of ₹10,00,000/- was borrowed by the appellant-defendant on 10.04.2001 but an amount of ₹10,000/- was further taken as a loan on 28.08.2001 and the fact with regard to receipt as loan of second amount of ₹10,000/- and the hand entry dated 28.08.2001, has been admitted by the appellant-defendant.

9. The argument of the counsel for the appellant-defendant that the appellant-defendant did not need any money as he is a Non-Resident Indian, cannot be accepted, specially when the borrowing of ₹10,000/- by him on 28.08.2001, has been admitted. Evidence has been produced on record proving the entries in the account books of the bank by the bank officials that there were enough funds available to advance loan. Not only that, even the income-tax returns have been produced and the same proved by the officials of the Income Tax Department, where the loan amount of ₹10,00,000/- and ₹10,000/- has been duly reflected.

10. There is overwhelming evidence brought on record by the respondents-plaintiffs proving the fact that the appellant-defendant had, in

fact, had taken loan from them. There is, thus, no merit in this appeal as well, specially when there are concurrent findings recorded by the Courts below on due and proper appreciation of the evidence and no substantial question of law arises for consideration of this Court.

11. In view of the above, the application for condonation of delay stands dismissed and the appeal on the ground of it being beyond limitation as also on merits.

October 12, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**