

CR-5008-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 08.02.2016

1.

CR-5008-2015

Jagtar Singh

... Petitioner

Versus

Doraha-Sirhind Canal Sub Division and others

... Respondents

2.

CR-6384-2015

Sher Singh through legal heir

... Petitioner

Versus

Doraha-Sirhind Canal Sub Division and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Jai Bhagwan, Advocate
for the petitioner in CR-5008-2015.

Mr.Sham Lal Bhalla, Advocate
for the petitioner in CR-6384-2015.

REKHA MITTAL. J.

By way of this order, I shall dispose of aforesaid petitions as
identical questions of law and fact are involved for adjudication.

However, for the sake of convenience, facts are taken from CR-5008-

2015.

Jagtar Singh and others filed a suit for permanent injunction restraining respondent No.1, its agents and associates from dispossessing the petitioner and proforma respondents forcibly and illegally from shops / khokhas bearing khasra Nos.228, 77, 228, 77, detailed in the head note of the plaint. The suit filed by the petitioner and co-plaintiffs was dismissed by the trial Court vide judgment and decree dated 23.07.2013.

To assail the judgment and decree passed by the trial Court, Jagtar Singh and his co-plaintiff Sher Singh preferred an appeal. Along with the appeal, an application was filed for condoning delay of 142 days in filing the appeal.

The Court in appeal, after seeking reply of the contesting respondent, framed issues, allowed the parties to adduce evidence and decided the application against the petitioner by holding that there is no sufficient ground to condone the delay in filing the appeal.

Feeling aggrieved by the order passed by the Court in appeal, the present petition has been preferred by Jagtar Singh alone.

Counsel for the petitioner contends that Court in appeal has failed to consider that technicalities or procedural delay should not be allowed to stand in the way of substantial justice. It is further argued that ordinarily, the Court is liberal to condone delay unless the application for condonation of delay is actuated by malafide or delay has resulted in conferring rights upon a third party.

Another submission made by counsel is that a serious prejudice is likely to be caused to the petitioner in case the impugned order is not set aside and the respondent can well be compensated with costs for delay attributable to the petitioner. The last submission made by counsel is that keeping in view the principle of natural justice, the petitioner may be heard on merits of the appeal.

I have heard counsel for the petitioner, perused the records particularly the judgment and decree passed by the trial Court and the impugned order passed by the Court in appeal.

The plea raised in the application is that the applicant/appellant were given oral assurance by the defendant that the appellants will not be dispossessed from the suit land except in due course of law and their lease agreement will be extended. Relying upon the oral assurance, they did not prefer an appeal against the judgment and decree dated 23.07.2013. The defendant/respondent has again threatened to dispossess the appellants from the suit land.

This Court is not oblivious of the fact that the Court is always liberal and inclined to condone delay in cases wherein provisions of Section 5 of the Limitation Act can be invoked. Equally true is that every endeavour must be made to adjudicate rights of the parties after affording them required opportunity. But at the same time, a litigant who seeks indulgence of the Court in exercise of its discretionary jurisdiction, it is incumbent upon him to approach the Court with clean hands.

The petitioner along with his co-plaintiffs filed the suit for injunction against Doraha-Sirhind Canal Sub-Division through Sub Divisional Officer, Doraha, District Ludhiana. Nothing has been mentioned in the application as to who on behalf of the department either gave assurance that the appellants would not be dispossessed except in due course of law or their lease agreement will be extended. Even otherwise, it is difficult to believe that such an assurance could be given by an official of the department. This fact alone is sufficient to hold that story put up by the petitioner lacks foundation and bereft of truth, thus, disentitles the petitioner to seek exercise of discretionary jurisdiction of the Court in his favour.

This apart, the Court has examined the case from the point of view of prejudice in case the appeal is not heard on merits. The case of the petitioner and his co-plaintiffs is that lease was created in their favour in regard to the suit property. Notices under Section 4 & 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (in short 'the Act') were issued to them and they submitted reply in response thereto. The defendant/respondent filed the written statement admitting possession of the petitioner and his co-plaintiffs over the disputed shops/khokhas as lessees and execution of lease deed in their favour. As soon as notice under Section 4 & 5 of the Act was issued to them, they immediately approached the civil Court in order to stall the legal process issued by the respondent for their eviction in due course of law. Counsel for the

petitioner has fairly conceded that till date the petitioner or his co-plaintiffs have not been dispossessed from the suit property despite the fact that the suit was instituted in the year 2006 and dismissed by the trial Court in the year 2013. Once the respondent has admitted the factum of the possession of the petitioner and others and also initiated the process for their eviction and has not dispossessed them for a period of more than 10 years since initiation of proceedings, it is difficult to accept contention of the petitioner that he is likely to suffer serious prejudice much less irreparable loss or injury in case the appeal is not heard on merits. Under these circumstances, in my considered opinion, setting aside the impugned order and restoring the appeal on the Board of the Ist appellate Court would be nothing but wastage of precious time of the Court and increasing pendency of the cases. Analyzed from any angle, I do not find any merit in the contention of the petitioner that the impugned order is liable to be set aside.

For the foregoing reasons, finding no merit, the petitions are dismissed in limine with no order as to costs.

(REKHA MITTAL)
JUDGE

February 08, 2016.
Davinder Kumar