

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

CR No.7495 of 2012
Date of decision : 10.08.2016

Santokh Singh

...Petitioner

Versus

Balbir Singh and others

...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. G.S. Bhatia, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The petitioner-defendant No.2 who was ex parte before the trial Court in suit for specific performance of agreement to sell dated 22.10.2002, is aggrieved of the order declining the application seeking condonation of delay in filing the appeal against the judgment and decree dated 02.12.2009 on the premise that explanation of delay of 90 days had been lacking reasons, much less, not supported by cogent or positive reasons.

Mr. G.S. Bhatia, learned counsel appearing on behalf of petitioner-defendant No.2 submits that Vendor-Mohinder Singh had sold the land measuring 4 kanals to the petitioner vide sale deed dated

03.06.2003 whereas when on realising the fact that he already entered into agreement to sell dated 22.10.2002 with respondent-plaintiff Nos.1 and 2. Mohinder Singh assured that he will protect the interest of his client and on this assurance, did not contest the suit and the suit as noticed above, had been decreed. The factum of the aforementioned proceedings acquired by the petitioner after receiving the notice of the appeal filed at the instance of defendant No.1-Mohinder Singh. It is in this backdrop of the matter, delay of 90 days had occurred and, therefore delay was not within the control, much less, beyond control. The Court ought to have condoned the delay and heard the matter on merits.

Per Contra, Mr. Munish Gupta, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that appeal at the instance of the defendant No.1-Mohinder Singh bearing No.88 of 2010 has already been dismissed vide judgment and decree dated 29.11.2012 and the petitioner was also arrayed as respondent No.3 and was represented through counsel Mr. V.K. Gupta. He could have supported the grounds of appeal by challenging the decree under provision of Order 41 Rule 33 of CPC. Having failed to do so, no further cause of action survives in the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

The factum of passing of the judgment and decree dated 29.11.2012 in Civil Appeal No.88 of 2010 at the instance of defendant No.1-original Vendor, cannot be denied as it is a matter of record. It is also matter of record that the petitioner was arrayed as respondent No.3 and was

represented through counsel. He could have easily challenged the judgment and decree dated 02.12.2009 by taking the aid of provision of Order 41 Rule 33. Having failed to do so, it would be totally farcical exercise in condoning the delay of 90 days and with direction to the lower Appellate Court to decide the appeal on merits, once the original Vendor had already failed in this regard.

With the aforementioned observations, I do not find any illegality and perversity.

No ground for interference is made out.

Dismissed.

10.08.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No