

Civil Revision No. 7725 of 2013

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7725 of 2013

Date of Decision: 18.10.2016

Surjit Singh and others

---Petitioners

vs.

Parminder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Narula, Advocate
for the petitioners

Mr. Achin Gupta, Advocate
for respondent Nos. 1 to 3

Rekha Mittal, J.

The present petition has been directed against order dated 16.11.2013 (Annexure P-1) passed by the Additional District Judge, Faridkot, whereby the application (Annexure P-2) filed under Section 5 of the Limitation Act, 1963 (in short “the Act”) for condonation of delay in filing the appeal against the judgment and decree dated 6.8.2008 (Annexure

P-4), has been dismissed.

A brief backdrop of this case is that Parminder Kaur and others filed a suit for recovery of Rs. 10,00,000/- against Surjit Singh and others as damages on account of death of Jaswinder Singh at the behest of the defendants. The suit was decreed by the Civil Judge (Senior Division), Faridkot and the respondents/plaintiffs were held entitled to recover Rs. 10,00,000/- alongwith pendente lite and future interest @ 6% per annum till actual realization with a further direction that court fee of Rs. 12,104/- be recovered from the defendants as the plaintiffs are permitted to sue as indigent persons.

Surjit Singh and another out of the defendants challenged the judgment and decree passed by the trial court by filing Civil Miscellaneous appeal alongwith an application for condonation of delay of more than one year. The first appellate court, on the basis of pleadings of the parties framed issue, “whether there are sufficient grounds to condone the delay?OPA”, permitted the parties to adduce evidence in support of their respective claims and eventually decided the aforesaid issue against them with the findings that the applicants/judgment debtors have not come to the Court with clean hands, adopted dilatory tactics, therefore, issue No. 1 is

decided against them. A relevant extract from the impugned order reads as follows:-

“11. I perused the evidence of applicants as well as of the respondent and find that the applicant has not come to the court with clean hands rather he propounded the entire story just to cover-up his wrong. He deposed that he came to know regarding passing of the judgment on 1.9.2009 and he immediately rushed to his counsel and applied for certified copy of the judgment on 8.9.2009. The same has been supplied on 10.9.2009. Here the applicant has made a date 8.9.2009 i.e. the date of knowledge of the judgment. But this fact is not proved because if we go through the evidence of RW1, who categorically deposed that the counsel for the applicant Shri Balwinder Singh Dhaliwal Advocate through his Clerk Sukhchain Singh, has applied for a copy of judgment on 21.8.2008 and its entry was made in the register at Sr. No. 5971. Copy of the judgment was prepared on 26.8.2008 and it was delivered on 1.9.2008 to said Sukhchain Singh. Here I like to discuss that the counsel for the applicant in the trial was also Shri Balwinder Singh Dhaliwal Advocate and same was clerk i.e. Sukhchain Singh and in appeal. Shri Balwinder Singh Dhaliwal Advocate again appeared on behalf of the

applicants and as such if Clerk of Shri Balwinder Singh Dhaliwal, Advocate applied for certified copy, then it is clearly established that he applied on behalf of the applicants. So, it means that the applicants are well within the notice of passing of judgment on 6.8.2008 and obviously they applied for certified copy through Clerk of their counsel.

12. Further more, after passing of the judgment, respondent-plaintiff filed an execution wherein all the proceedings from attachment to sale, have already been conducted and amount has already been recovered by the decree holder/respondent and for that, the version of the respondent is that the service of applicants -JDs was effected in that execution application in the year 2008 and accordingly they appeared through their counsel Shri Balwinder Singh Dhaliwal, Advocate. For that purpose I like to refer the examination-in-chief of RW3 Rajinder Singh Patwari, who categorically deposed that in pursuance of warrants of attachment issued by the Court of Civil Judge (Senior Division), Faridkot, he visited village Rameana on 13.11.2008 alongwith Kanungo and effected munadi for attachment of land of the applicants/JDs and in the presence of applicant-JD, attachment was made vide rapat No. 105 dated 13.11.2008. So, again it is clear that on 13.11.2008

passing of the decree was well within the notice of the appellant-JD. Further RW-5 Ashok Kumar Process Server deposed that summons of JDs/applicants Surjit Singh, Jaswant Singh, Rajpal Singh, Baldev Singh sons of Govind Singh and Suba Singh son of Rajpal Singh were entrusted to him for service of the JDs for 25.4.2009 and accordingly JDs Jaswant Singh, Surjit Singh and Rajpal Singh were duly served, but Baldev Singh and Suba Singh were not present. So, it means that on 24.4.2009 Jaswant Singh, Surjit Singh and Rajpal Singh were become aware of the passing of judgment. Not so, RW6 Pardeep Kumar has categorically deposed that on 25.4.2009 Shri Balwinder Singh Dhaliwal Advocate appeared on behalf of Surjit Singh and Jaswant Singh. Apart from that I also like to refer the evidence of RW2 Balwinder Singh Ex-Sarpanch of village Rameana, who categorically deposed that the land of applicants/JDs was attached on 13.11.2008 in their presence. So, it means that first the passing of judgment and decree came to the notice of applicants on 21.8.2008 when they applied for obtaining certified copy of judgment through their counsel, which was entered in the register of the Copying Agency at Sr.No. 5971 and its copy was delivered on 1.9.2008 and further on 13.1.2008 service of the applicants/JDs in execution application was effected

and then notice of the application under Order 21 Rule 66 CPC was served upon the applicants-JDs on 2.4.2009 and then they appeared through their counsel in the Court in that execution application on 25.4.2009. So, it means that the applicants-JDs have not come to the court with clean hands. Therefore, I find sufficient cause for not allowing the application because the applicants had adopted dilatory tactics. Therefore, issue No. 1 is decided against the applicants-JDs and in favour of the respondents/Decree-holders.”

Counsel for the petitioners has fairly informed that he is not in a position to assail the factual findings recorded by the Court below negating plea of the petitioners that there are sufficient grounds for condoning delay or delay in filing the appeal was not intentional or it was due to reasons beyond control of the petitioners. Nevertheless, counsel for the petitioners has submitted that as refusal to condone delay would result in grave miscarriage of justice, it would be a good ground to condone delay. To substantiate his contention, it is argued that the petitioners have already deposited an amount of Rs. 10,00,000/- (decretal amount) with the trial court in pursuance of order dated 18.12.2013 passed by this Court and the said amount has already been paid to the decree holders, sufficient to prove

bona fides of the petitioners. It is further submitted that in the given circumstances, an opportunity is required to be provided to the petitioners to be heard on merits of the appeal as pendency of appeal would not cause any prejudice to the respondents/decreed holders. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India *O.P.Kathpalia vs. Lakhmir Singh (Dead) and others* 1098(4) SCC 66 and *State of Nagaland vs. Lipok AO and others* 2005(2)RCR(Civil) 375.

Counsel for the contesting respondents, on the contrary, would argue that the averments raised in the application for condonation of delay have been found to be patently false and the petitioners have been found guilty of approaching the Court with unclean hands, they cannot be allowed to find fault in the discretion exercised by the Court of appeal negating their plea of condonation of delay. It is further submitted that on the basis of judgment and decree passed by the trial court, the respondents/decreed holders filed an application for execution wherein property of the JD(s) was attached, put to auction and the decretal amount was recovered. He has refuted contention of the petitioners that the decree holders have withdrawn the amount of Rs. 10,00,000/- stated to be deposited by the petitioners in

compliance of order dated 18.12.2013 passed by this Court. Further submitted that as claim of the decree holders already stood satisfied in the execution proceedings initiated by them and the said fact also finds reference in the order impugned, there was no reason for the decree holders to seek withdrawal of the amount purported to be deposited by the petitioners. In addition, it is argued that as attached property of the JD(s) has been put to sale in the auction conducted by the executing Court and interest of a third party (auction purchaser) has been created, it would be travesty of justice in case plea of the petitioners is accepted despite the fact that counsel for the petitioners is not in a position to point out any error much less illegality in the order impugned. The last submission made by counsel is that the judgment in ***O.P.Kathpalia's case (supra)***, passed in exercise of power under Article 136 of the Constitution of India has got no bearing on the instant case wherein the petitioners have been found guilty of approaching the Court with soiled hands.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Be that as it may, it is an undisputed position of the case that the petitioners are not in a position to assail correctness and legality of the

impugned order wherein the Court of Appeal has held the petitioners guilty of not coming to the Court with clean hands and having adopted dilatory tactics.

The question that arises for consideration is whether the petitioners can derive any advantage to their contention from the judgment in *O.P.Kathpalia's case (supra)* that has further been relied upon in *State of Nagaland's case (supra)*. In *O.P.Kathpalia's case (supra)*, the Court has held in para 27, quoted thus:-

“.....Now ordinarily the view of the court dealing with facts in an application under Section 5 of the Limitation Act would not be interfered unless the failure to exercise jurisdiction would lead to miscarriage of justice.”

Hon'ble the Apex Court, in the peculiar facts and circumstances of the case, held that refusal to condone the delay by the District Court as well as the High Court has resulted in gross miscarriage of justice inasmuch as the tenant lost protection of the Act (Delhi and Ajmer Rent Control Act, 1953) for his failure to comply with a non est injudicious order which was a nullity in the eye of law. Thus, the appellant had made out a very convincing and just cause for condoning the delay in preferring the appeal. Counsel for the petitioners is not in a position to advance any meaningful

arguments as to how the observations made in the referred authority can be applied to the case at hand particularly in view of the observations by the Court of Appeal holding the petitioners guilty of not coming to the Court with clean hands and adopting dilatory tactics. In this view of the matter, the petitioners are not entitled to indulgence of this court by relying upon the judgments cited by their counsel.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed with costs of Rs. 10,000/-.

(Rekha Mittal)
Judge

18.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No