

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-2668 of 2016
DECIDED ON: JANUARY 25, 2016

Harpreet Kaur and another

.....Petitioners...

VERSUS

Surinder Kumar and others

...Respondents...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vineet Sehgal, Advocate,
for the petitioners.

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?

JASPAL SINGH, J

Harpreet Kaur and another have filed the instant petition under Section 482 of the Code of Criminal Procedure for quashing of order dated December 19, 2012 (Annexure P-4) passed by Executive Magistrate, Naraingarh, District Ambala as well as order dated December 08, 2015 (Annexure P-6) passed by Id. Sessions Judge, Ambala whereby the revision petition has been dismissed solely on the ground of dismissal of application for condonation of delay in filing the revision petition.

2. The contention of learned counsel for the petitioners is that the petitioners owned land measuring 11 kanals 14 marlas adjoining the land of passage/street comprising khasra No.354. The area of which is 11 feet, situated in Ward No.2, Old Road, Kala Amb Road, Opp. Shamshan Ghat, Naraingarh, District Ambala. With an intention to build a residential accommodation on

their land, the petitioners applied for the approval of site plan with respondent No.4 on February 09, 2012. Accordingly, they deposited a requisite fee amounting to ₹15,615/- after the demand raised by respondent No.4 vide notice dated February 03, 2012 in this regard, but respondents No. 1 to 3 with mala fide intention and in order to cause harassment to the petitioners filed petition under Section 133 Cr.P.C. before the Id. Executive Magistrate, Naraingarh, District Ambala alleging that the petitioners are illegally encroaching upon the street/passage comprising khasra No.354. The petitioners appeared before the Executive Magistrate and presented their case that the construction is being carried out by them in their own land and they are not encroaching upon any part of the passage/street referred to above but the Id. Magistrate while overlooking the submissions made by the petitioners and in a biased manner has passed order dated December 19, 2012 directing them to remove the encroachment from the passage in question. In fact, no such order was passed in the presence of either of the petitioners nor any copy thereof was supplied to them.

3. Learned counsel for the petitioners further contends that respondents No. 1 to 3 preferred another frivolous complaint against the petitioners in the month of January 2014 with Sub-Inspector of Police Station concerned and it was only thereafter, the impugned order dated December 19, 2012 came to the knowledge of petitioners. Immediately, thereafter, they preferred the revision petition before the Id. Sessions Judge, Ambala, which was illegally and unlawfully dismissed without applying his mind by Id. Sessions Judge. Id. Sessions Judge while passing the impugned order dated December 08, 2015 (Annexure P-6) ignored the settled principles of law that in case, the

revision petition is preferred, the same is required to be decided on merits and it should not be dismissed on the basis of technicalities. The revision petition preferred by the petitioners was dismissed by the Id. Sessions Judge solely on the ground of delay, laches and without taking into consideration the factual position and overlooking the demarcation report dated May 22, 2014 conducted on the specific directions of Tehsildar by the Field Kanungo, in which the representative of respondent No.4 was also present. Thus, the impugned order passed by the Executive Magistrate as well as order whereby revision petition has been dismissed are absolutely against the law and facts and as such are liable to be set aside.

4. This Court has given an anxious thought to the aforesaid submission made by learned counsel for the petitioners but is not in agreement with the same.

5. A perusal of order dated December 19, 2012 (Annexure P-4) transpires that the petitioners contested the proceedings before the Id. Magistrate and it was only thereafter, the petitioners were directed to remove the encroachment made by them on the passage/street comprising in Khasra No. 354. They remained tight lipped thereafter and filed revision petition before the Id. Sessions Judge after a delay of more than 1 year and 3 months, which is absolutely unexplained. The petitioners appeared before the Executive Magistrate on each and every date of hearing till August 13, 2012. They were well aware about the proceedings before the Executive Magistrate, Naraingarh as they had been participated in those proceedings. If for the sake of arguments, it is admitted that after attending some of the proceedings before the Executive Magistrate, they were not present on December 19, 2012 when the final order

was pronounced, they cannot complain that they have been proceeded against ex-parte wrongly or that they were not aware about order dated December 19, 2012.

6. It is well established that revision petition can be preferred within a period of 90 days after the passing of order but the revision petition before the 1d. Sessions Judge was preferred by the petitioners after an expiry of 1 year and 3 months. There is no plausible explanation for such an inordinate delay put forth by the petitioners. In such circumstances, this Court does not find any infirmity or illegality in the order dated December 08, 2015. This Court also does not find any justifiable reason to condone such a long and unexplained delay. This Court is also of the considered view that there is no justifiable reason to cause any interference by this Court or to meddle with the conclusion arrived at by the 1d. Sessions Judge, Ambala.

7. In the light of what has been discussed above, this Court does not find any merit in the instant petition. Accordingly, the same is dismissed.

JANUARY 25, 2016
sonika

(JASPAL SINGH)
JUDGE