

CWP No.14824 of 2014

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

CWP No.14824 of 2014

Date of decision:28.09.2016

Amarjit Singh

...Petitioner

Versus

Addl. Deputy Commissioner-cum-Registrar,
Ferozepur and others

...Respondents

CORAM: Hon'ble Mr. Rakesh Kumar Jain

Present: Mr. K.R.Dhawan, Advocate,
for the petitioner.

Mr. Anant Kataria, DAG, Punjab,
for respondents No.1 and 2.

Mr. Sameer Sachdeva, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J.

This petition is filed in order to challenge the order dated 20.12.2007 passed by respondent No.1.

The brief facts of the case are that respondent No.3 made an application to the Joint Sub Registrar, Sub Tehsil Makhu, District Ferozepur, alleging therein that the petitioner had executed a sale deed on 18.10.2006 of the land measuring 12 Kanals, 07 Marlas and 02 Sirsahies, being 2225/20115 shares of the land measuring 111 Kanals 15 Marlas, situated in the area of village Hadayat Ulla Shah, Tehsil Zira, District Ferozepur, in the presence of the witnesses, for a sale consideration of ₹4,25,000/-, which he had already received at the residence of respondent

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No.3, but refused to get the sale deed registered. It is also alleged that the sale deed was scribed by Vikram Kapoor, Advocate, Makhu. Thus, the prayer was made to the Joint Sub Registrar to register the sale deed as per the rules. It is alleged that the Joint Sub Registrar did not pass any order regarding registration of the sale deed on the same day rather the order was passed on 23.10.2006. However, the order dated 23.10.2006 shows that the application dated 18.10.2006 was presented on 23.10.2006 along with documents and on the same day, the order of refusal was passed. The order dated 23.10.2006 reads as under:-

“Today i.e. 23.10.2006, this application was submitted by Harjinder Singh S/o Jagjit Singh along with the documents. Seller is not present, therefore, the document is being refused to be registered and has been entered in the Bahi No.2. Original application and document is being returned to the applicant.”

Aggrieved against the said order, respondent No.3 filed appeal before the Registrar, Ferozepur, in which the following averments have been made:-

“....However, the said sale deed was not returned on 18.10.2006 when it was executed and presented for the purpose of registration but the Joint Sub Registrar, Makhu kept the same with him and returned the same vide its order dated 23.10.2006, without assigning any reason. It is pertinent to submit here that the parties as well as the attesting witnesses to the said sale deed were present at that time....”

Respondent No.3 also filed an application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the “Limitation Act”) as the period of filing the appeal was of 30 days, as provided under Section 73 of the Registration Act, 1908 (hereinafter referred to as the “Act”), which

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had already expired. In the said application, it is mentioned by respondent No.3 that the order dated 23.10.2006 was passed by the Joint Sub Registrar behind his back and, thus, he had no knowledge about it. It is also alleged that respondent No.3 is an illiterate person and had no knowledge that the appeal had to be filed within 30 days from the date of the order. The said appeal has been allowed by the impugned order dated 20.12.2007 and the delay in filing of the appeal was condoned on the ground that the order dated 23.10.2006 was passed by the Joint Sub Registrar behind the back of respondent No.3 and limitation has to be counted from the date of the knowledge. However, it is nowhere mentioned by respondent No.3 even in his application filed for condonation of delay that as to on what date he got the knowledge of the order dated 23.10.2006.

The petitioner, under a wrong advice, filed the suit for declaration to challenge the impugned order dated 20.12.2007. The said suit was dismissed on 24.01.2011, the first appeal was dismissed on 23.07.2012 and the second appeal was withdrawn by the petitioner on 28.04.2014, with liberty that he would challenge the impugned order passed by the Registrar by way of writ petition because it was found that the suit filed under Section 77 of the Act against the order of the Registrar was not maintainable as the suit was maintainable when the Registrar refuses to register the sale deed.

Be that as it may, counsel for the petitioner has submitted that the Registrar has committed an error in law in condoning the delay in filing of the appeal on wrong premise because it has been observed that the appeal

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has been filed by respondent No.3 after the date of knowledge as the order was not passed by the Joint Sub Registrar on 23.10.2006 in his presence. It is submitted that this finding is perverse as it runs contrary to the pleadings on record. In this regard, he has referred to the grounds of appeal (attached as Annexure P-2), in which there is not even a whisper by respondent No.3 that the order dated 23.10.2006 was passed behind his back rather the positive case of respondent No.3 is that the order dated 23.10.2006 was passed by the Joint Sub Registrar in the presence of the parties as well as the attesting witnesses. It is further submitted that even the language of the order dated 23.10.2006 itself suggests that the application dated 18.10.2006 was presented before the Joint Sub Registrar on 23.10.2006 and on that very day, the order of refusal was passed. It is further submitted that in order to seek the condonation of delay, respondent No.3 may have made the false averments in his application in which it is stated that the order dated 23.10.2006 was passed behind his back and even did not mention the date on which he came to know about the said order in order to take advantage of counting the period of limitation from the date of his knowledge. He has also submitted that the period of 30 days, as provided in Section 73 of the Act, cannot be extended further as it is not so provided in the said provision. In support of his submissions, counsel for the petitioner has relied upon a decision of the Allahabad High Court in the case of **Shiv Charan Das and others vs. Rukmani Devi and another**, 1975 AIR (Allahabad) 354.

On the other hand, counsel for the respondents have submitted that the delay can be condoned with the aid of Section 5 of the Limitation

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Act by explaining the sufficient cause to the Court. It is further submitted that since the order dated 23.10.2006 was passed by the Joint Sub Registrar against respondent No.3 in his absence, therefore, the limitation has rightly been counted from the date of his knowledge and has rightly been appreciated by the Registrar while condoning the delay.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Respondent No.3 submitted the application, which is allegedly dated 18.10.2006, to the Joint Sub Registrar for registration of the sale deed behind the back of the seller/petitioner alleging that he had already made the payment to him at his home. The Joint Sub Registrar recorded the order on 23.10.2006 in which he has mentioned that the application has been presented before him on the same day i.e. 23.10.2006 along with documents but since the seller was not present, therefore, he refused to register the document/sale deed. Respondent No.3 filed the appeal against the order dated 23.10.2006 in which he has categorically mentioned that the order dated 23.10.2006 was passed in his presence, which means that he had the knowledge of the order dated 23.10.2006. However, when he came to know that he had filed the appeal beyond the period of 30 days, as provided under Section 73 of the Act, he filed the application for condonation of delay in which he took a somersault and made a false averment that the order dated 23.10.2006 was passed behind his back and forgot what he had averred in the grounds of appeal. Moreover, he did not mention the date on which he came to know about the order dated 23.10.2006 but the Registrar, while

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condoning the delay in filing of his appeal, did not consider these aspects and condoned the delay just on the ground that the Court should have liberal approach in condonation of delay and that the limitation has to be counted from the date of knowledge without adverting to the fact that as to what was the date on which the respondent No.3 had acquired the knowledge, otherwise respondent No.3 has told white lie to the Court in his application filed for condonation of delay because it runs contrary to the pleadings of the ground of appeal before the Registrar. Not only this, there is no provision in Section 73 of the Act for extension of time beyond 30 days for filing the appeal and this regard, the judgment relied upon by the counsel for the petitioner in **Shiv Charan Das's case (supra)** is helpful to him. The relevant portion of the said judgment is reproduced as under:-

“22. Sections 71 to 77 of the Registration Act lay down when an appeal or an application against an order passed by a Sub-Registrar can be filed. It also lays down the procedure. The jurisdiction of the District Registrar was conditional upon the appellant making an application in 30 days and filing copy of Sub-Registrar's order therewith. If there was no valid application before him, then he had no jurisdiction. There must be initial jurisdiction and then a court or a tribunal can decide a matter rightly or wrongly. An order of registration passed on an application presented beyond 30 days is ultra vires. Jurisdiction to pass an order arises only when all the requirements are fulfilled. I am fortified in this view by the observations made in (1883) ILR 9 Cal 150 and (1902) 24 All 402 (FB) (ibid). In the former case it was held that under the Registration Act a suit to compel registration is maintainable only where the provisions of Section 77 of the Act have been complied with. A person omitting to make an application to the Registrar as provided by Section 73 cannot be said to have complied with the conditions precedent to a suit under Section 77. In the latter case it was held that where an application purporting to be one under

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Section 73 of the Act is presented to the Registrar after the expiration of 30 days limited by that section, such an application is not an application which could be entertained under that section and the summary rejection of such application on the ground that it was put in beyond time is perfectly justified. According to the view taken in this case, such an application is liable to be rejected in limini. Even the contention that if period is not extended it will have disastrous effect on a party was repelled on the ground of “vigilantibus non dorminentibus jura subveniunt....”

No other point has been raised.

Thus, in view of the aforesaid discussion, I find merit in the present petition and hence, the same is hereby allowed and the impugned order dated 20.12.2007 passed by the Additional Deputy Commissioner-cum-Registrar is quashed.

September 28, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No