

In the High Court of Punjab and Haryana at Chandigarh

**CM No. 1182-C of 2016 &
CM No. 794-C of 2011 in/and
RSA No.282 of 2011(O&M)
Date of Decision: 10.2.2016**

Subhash Chander

---Appellant

versus

Bajrang Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Kanwaljit Singh, Senior Advocate
with Ms. Gurdeep Kaur, Advocate
for the applicant-appellant**

**Mr. C.B.Goel, Advocate
for respondents No. 1 and 2**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

Rekha Mittal, J.

CM No. 1182-C of 2016

Allowed as prayed for.

**Affidavit of Bajrang Lal-attorney of the applicant-appellant is
taken on record.**

**CM No. 794-C of 2011 in/and
RSA No.282 of 2011(O&M)**

**The present appeal has been directed against consistent
findings recorded by the courts below whereby claim of the appellant in
regard to ownership in possession of 1/8th share in suit land measuring 52**

kanals 9 marlas on the basis of natural succession to the estate left behind by Geeta Devi @ Geera Devi, mother of the appellant (died on 7.11.2000), has been rejected and the Will dated 17.9.1991 purported to be executed by Smt. Geeta Devi @ Geera Devi in favour of respondents No. 1 and 2, has been accepted.

Alongwith the appeal, an application has been filed for condonation of delay of 549 days in filing the appeal. The plea in the application is that the applicant is settled in Germany for the past more than 20 years and is an NRI. He could not look after the case himself and appointed Mr. Inderjit Sharma, his first cousin as his attorney. The applicant was always made to understand that his attorney will look after his interest properly, used to inform day to day proceedings. Mr. Inderjit Sharma being the common relative, was won over by the respondents and therefore, never intimated him about decision of the appeal. On every occasion, Inderjit Sharma used to intimate the applicant that the appeal is pending and no decision has been taken. In February 2009, he came to India, visited his town Fatehabad and purchased property worth Rs. 28 lacs in the name of his wife and got the sale deed registered from the respondents but nobody informed him about decision of the appeal. He came to know about dismissal of appeal only in the month of January 2010 when his relative informed him that his attorney has colluded with the other party and he has even lost his case before the lower appellate court.

Thereafter, the applicant made enquiry from the counsel and his attorney and came to know that the appeal has already been decided. He got a certified copy applied on 1.7.2010 and received on 2.7.2010,

appointed Sh. Bajrang Lal son of Deep Chand as his attorney and cancelled the power of attorney in favour of Inderjit Sharma. The delay in filing the appeal is not intentional but due to the aforesaid reasons.

The contesting respondents filed reply to the application seriously contesting claim of the applicant and denying the averments made in the application. However, it is admitted that in the Court of appeal, he (applicant) defended the case through his attorney Mr. Inderjit Sharma. The applicant pursued the suit personally before the trial court, therefore, there was no impediment to pursue the first appeal as well. It has been denied that Sh. Inderjit Sharma was won over by the respondents or he never intimated decision of the appeal to the applicant. The applicant was directly in touch with his counsel and he visited India and also Fatehabad in February 2009, August 2009 and again in February 2010 and thus, the entire story set up by him is false and concocted one. The applicant purchased 14 kanals out of land measuring 66 kanals from the answering respondents in the name of his wife Smt. Suhsila Chand vide registered sale deed dated 20.2.2009. At that time, he was in India and was well aware of the decision by the first appellate court dated 20.12.2008.

In response to the reply, the applicant filed an affidavit of Sh. Bajrang Lal, his attorney to file response to para 6 of the reply in regard to his visits to India in August 2009, February 2010 besides his visit in February 2009.

Mr. Kanwaljit Singh, Senior Advocate with Ms. Gurdeep Kaur, Advocate, counsel for the applicant has submitted that delay in filing the appeal has occurred due to the reasons mentioned in the application that

attorney of the applicant kept him in dark and did not inform him about decision of the appeal either during his presence in Germany or in India. It is further argued that the applicant has not gained, in any manner, by delay in filing the appeal. It is further submitted that had the applicant received information about decision of the appeal at any time prior to gaining knowledge from one of the relatives, as stated in para 08, there was no reason for him not to file the appeal in time. According to counsel, though the applicant has explained the reason for delay constituting sufficient cause but even if there is some lapse on his part, it should not be allowed to enure to the benefit of the respondents by rejecting his appeal due to procedural lapse. In addition, it is submitted that in view of principles of natural justice, the applicant may be allowed an opportunity to be heard on merits of the appeal.

Counsel for the contesting respondents has submitted that the applicant admittedly visited India in February 2009. There is no explanation as to why he either could not contact his counsel or seek necessary information from the Court wherein the appeal was pending. The applicant intentionally concealed the factum of his visits to India in August 2009 and February 2010. It is vehemently argued that as the applicant is guilty of concealing material facts of his visits to India in August 2009 and February 2010, he has dis-entitled himself to seek indulgence in exercise of discretionary jurisdiction of the Court. The applicant has not filed his affidavit either in support of his initial application for condonation of delay nor to explain his concealment in regard to his visits to India in August 2009 and February 2010. As case of the applicant seeking condonation of

delay is based on falsehood and concealment of material facts, the application is liable to be dismissed.

I have heard counsel for the parties and perused the records.

The application filed by the applicant is conspicuously silent as to the period of his stay in India in February 2009. He has definitely concealed the factum of his visits to India in August 2009 and February 2010. There is nothing on record to suggest as to for how many days, the applicant stayed in India or his village Fatehabad during his visits in August 2009 and February 2010.

In para 8 of the application, it is averred that the applicant came to know about dismissal of appeal in the month of June 2010 from a relative. He has not disclosed the name of said relative nor got filed his affidavit in support of the plea that said relative informed him about dismissal of the appeal. All these facts go to show that the averments raised in the application are not only vague but also the result of concealment of material facts from the Court.

The applicant did not file his own affidavit either in support of his application for condonation of delay or in response filed qua averments raised in para 6 of the reply filed by the respondents. It is for the applicant to disclose the facts to his personal knowledge, to establish his plea to be bona fide, thus, constituting sufficient cause. There is no explanation as to why he could not come to know about decision of the appeal during his three visits to India. This apart, if the applicant did not bother to contact his counsel either during his stay in Germany or in India, he has failed to prove that he has acted with reasonable diligence in prosecution of his appeal.

This Court is conscious of the fact that technicalities and procedural delay, ordinarily, should not be allowed to stand in the way of substantial justice. At the same time, a litigant who has approached the court with soiled hands by misrepresentation or suppression of material facts, is not entitled to a relief in equity.

In the present case, the applicant has suppressed material facts in regard to his visits to India in August 2009 and February 2010. He has not disclosed the period of his stay in India on three visits. There is no explanation for his inability to contact his counsel. He has concealed the name of relative who informed him about decision of the appeal in June 2010. A cumulative view of the aforesaid facts and circumstances would clearly negate his (appellant's) plea not lacking bona fide much less suffice to establish sufficient cause to condone delay.

For the foregoing reasons, application for condonation of delay is dismissed. As a natural corollary, the appeal filed by the applicant-appellant is dismissed being barred by limitation. No order as to costs.

(Rekha Mittal)
Judge

10.2.2016
PARAMJIT