

RSA-4253-2012(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4253-2012(O&M)

Date of decision : 18.01.2016

Harvinder Singh and others

... Appellants

Versus

Surinder Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.H.P.S.Ghuman, Advocate
for the appellants.

Mr.R.S.Modi, Advocate
for respondent No.1.

REKHA MITTAL. J.(ORAL)

CM-11767-C-2012

Prayer in this application is for condoning delay of 871 days
in filing the appeal.

Counsel for the applicants-appellants has submitted that the
appeal was filed in the registry of the Court on 28.05.2010 but the same
was returned with certain objections. It is further submitted that after
removing the objections, the appeal was re-filed on 01.10.2012 and as a
result, there is delay of 871 days in filing the appeal.

Counsel for respondent No.1 has submitted that appellants
No.1 to 3 are residing at the same address and there is no satisfactory
explanation as to why the Vakalatnama could not be got signed from

appellants No.2 to 4 for about two years in order to comply with the objections raised by registry of the Court.

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

As the appeal was initially filed after delay of 13 days only and further delay has happened in refiling the appeal, in view of averments made in the application and arguments advanced by counsel for the applicants-appellants, in my considered opinion, there are sufficient grounds to condone the delay in filing the appeal. Accordingly, the application is allowed and delay of 871 days in filing the appeal is condoned.

RSA-4253-2012

The present appeal has been directed against concurrent findings of fact recorded by the Courts below whereby the suit filed by the respondent-plaintiff for possession by way of specific performance of agreement to sell dated 24.04.2010 qua land measuring 6 kanals 18 marlas situated at village Haryao Khurd, Tehsil Samana, District Patiala has been decreed.

Counsel for the appellants would contend that during pendency of appeal before the Court of Additional District Judge, Patiala, the appellants filed an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (in short 'CPC') for additional evidence.

It is argued that the appellants' prayed for examination of

Baljinder Singh son of Jarnail Singh, petition writer along with relevant record and Dr. Inderjit Singh, Fingerprints and Handwriting Expert to prove the report prepared by him. It is further argued that the Court disposed of the appeal without deciding the application for additional evidence, therefore, the judgment and decree passed by the appellate Court is liable to be set aside and the matter may be remitted to the appellate Court for decision afresh.

Counsel for the respondent has submitted that the appellants had already examined Dr. Inderjit Singh as an expert witness, therefore, no useful purpose would be served by setting aside the judgment and decree passed by the trial Court by issuing directions to the appellate Court to dispose of the application for additional evidence.

In reply, counsel for the appellants submits that earlier Dr. Inderjit Singh submitted a report on the basis of comparison of the disputed signatures with signatures on a photo copy of an entry in a register, therefore, his report was required on the basis of comparison of the disputed signatures with signatures on the original entry. It has also been argued that besides Dr. Inderjit Singh, the appellants also sought permission for examination of Baljinder Singh, petition writer along with record.

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

The substantial question of law which arises for consideration is whether the appellate Court was competent to decide the appeal without

deciding the application for additional evidence under Order 41 Rule 27 read with Section 151 CPC.

As per the settled position in law laid down in catena of judgments, the appellate Court is obligated to decide the application for additional evidence before disposing of appeal on merits. As the appellate Court disposed of the appeal without deciding the application for additional evidence filed by the appellants, the judgment and decree passed by the appellate Court cannot be allowed to sustain and liable to be set aside.

In view of what has been discussed hereinabove, without going into merits of the controversy, the appeal is allowed, the judgment and decree passed by the appellate Court is set aside with a direction to the Court to decide the application for additional evidence and the appeal afresh. Parties through their counsel are directed to appear before the appellate Court at Patiala on 19.02.2016.

Records of trial Court and appellate Court, if already received, be sent back to the said Court. The appellate Court is directed to decide the appeal within a period of four months from the date of parties putting in appearance before the Court i.e. 19.02.2016.

(REKHA MITTAL)
JUDGE

January 12, 2016.
Davinder Kumar