

Regular Second Appeal No.4897 of 2012 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4897 of 2012 (O&M)
Date of Decision: August 30, 2016

Chander Pal

...Appellant

Versus

Dr.R.S.Grewal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.S.S.Brar, Advocate,
for the appellant.

Mr.Arun Jain, Senior Advocate with
Mr.Arnav K. Sood, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Learned counsel for the appellant submits that the present appeal is covered by the judgment rendered by this Court in **Regular Second Appeal No.3241 of 2014 (Chander Parkash Soni Versus Dr.R.S.Grewal & others)**, decided on 21.1.2016 in respect of the same controversy, wherein the respondent-plaintiffs are the same. The present appeal is at the instance of the person against whom the suit for possession has been filed. Since this Court has already dismissed the suit

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of the respondent-plaintiffs in respect of shops of single storey, the present appeal is liable to be allowed in terms of the aforementioned order.

Mr.Arun Jain, learned Senior Counsel assisted by Mr.Arnab K. Sood, Advocate, for the respondent-plaintiffs submits that in pursuance to the execution of the judgment and decree dated 31.7.2008, possession of the property was taken, which is evident from the documents annexed with Civil Misc.No.5254-C of 2014, but thereafter the appellant forcibly taken the possession and in this regard, FIR No.65 dated 16.6.2012, under Sections 356, 323, 447, 148 and 149 IPC has been registered at Police Station, Division No.8, Ludhiana and the charges have been framed and the accused are facing criminal prosecution. He also submits that no explanation or cogent reasons have come forth to seek condonation of delay of 258 days in filing the present appeal.

Per contra, Mr.Brar submits that the appellant is a poor labourer and could not arrange the funds for engaging a counsel for filing the appeal. The delay is not intention but bonafide. In support of his contention, he has relied upon the judgment rendered in **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar**

Academy and others, (2013) 12 Supreme Court Cases 649.

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I have heard the learned counsel for the parties, appraised the paper book and of the view that the explanation given in the application is not lacking but is backed by cogent reasons and, therefore, the delay of 258 days in filing the appeal is condoned.

I have already held that the suit could not have been held maintainable in view of the findings. Accordingly, the judgment and decree of the Lower Appellate Court is set-aside and the suit is ordered to be dismissed. Resultantly, the appeal stands allowed.

The order of mine shall be read as part and parcel of this judgment.

This order shall not affect the pending criminal trial. The findings have to be based on the independent evidence.

August 30, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No