

RSA No.835 of 2012 (O&M)

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

RSA No.835 of 2012 (O&M)

Date of Decision: February 15, 2016

Rajinder Kumar

...Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Puneet Bali, Senior Advocate with
Ms. Monika Thakur, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.2212-C of 2012

Prayer in this application is for condonation of delay of 25 days in re-filing the appeal.

The reason assigned for the delay in re-filing the appeal is that after filing of the appeal, certain objections were raised by the Registry and the Clerk of the counsel had collected the paper-book for removal of the objections which inadvertently, was kept in the bunch of cases listed in the ordinary motion list. The applicant-appellant when came to enquire about the case, the paper-book was traced out with great difficulty and re-filed, which resulted in the delay of 25 days which is neither intentional nor deliberate. The application is supported by an affidavit of the Clerk of the counsel.

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In view of the reason assigned in the application, the same is allowed. Delay of 25 days in re-filing the appeal stands condoned.

CM No.2213-C of 2012

Exemption is granted from filing the certified copy of judgment and decree of the trial Court, subject to all just exceptions.

Application stands disposed of

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Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Panchkula, dated 28.09.2010, whereby, the suit for declaration to the effect that appellant-plaintiff alongwith proforma respondents 3 to 5, namely, Avtar Singh, Harbhajan Singh and Hari Singh, were the successful purchasers in the auction held on 26.03.2004 of the land measuring 149 Bighas 8 biswas situated in village Fatehpur Diwanwala, Kalka, Panchkula and for directing the respondent-defendant No.2 to confirm the auction held on 26.03.2004 in favour of the appellant-plaintiff and proforma respondent-defendants 3 to 5 and subsequent order, if any, passed by the authority under Rehabilitation Department regarding cancellation of the auction mentioned above as illegal, null and void with a consequential relief of permanent injunction restraining defendants 1 and 2 to re-auction the suit land, has been dismissed on the ground that the declaration as sought could not be granted to the appellant-plaintiff in the light of the terms and

conditions of the memorandum of offer dated 26.03.2004 and that remedy of arbitration as available under condition 6 has not been availed by the appellant-plaintiff, appeal against which preferred by him, has been dismissed by the Additional District Judge, Panchkula, on 11.08.2011 affirming the findings as recorded by the trial Court.

It is the contention of the learned Senior Counsel for the appellant that the findings as recorded by the Courts below cannot sustain as admittedly, the appellant-plaintiff alongwith proforma respondent-defendants 3 to 5 were the highest bidders in the auction held on 26.03.2004 qua the suit land and the deposit of the sum of ₹4,11,250/- being 25% of the bid money within time has also not been disputed. He contends that the Court should have returned the plaint to the appellant-plaintiff when it came to a conclusion that an alternative remedy was available to the appellant-plaintiff, which has not been availed by him, therefore, the judgments passed by the Courts below cannot sustain.

I have considered the submissions made by the learned Senior Counsel for the appellant but do not find anything in the impugned judgments which would, in any manner, indicate that the appellant-plaintiff has ever sought return of the plaint. It is not in dispute that as per clause 6 of the memorandum of offer dated 26.03.2004, it is mentioned that in case of any dispute, the matter was to be referred to the arbitration of the Financial Commissioner which remedy has not been availed of by the appellant-plaintiff. If

that be so, the Courts have rightly proceeded to hold that the declaration as sought by the appellant-plaintiff could not be granted to him especially when there is a remedy available as per the terms of the contract i.e. arbitration.

Learned Senior Counsel for the appellant, at this stage, prays for availing of the remedy of arbitration as observed by the Courts below in the impugned judgments.

A perusal of the judgments would show that the said remedy has not been curtailed in any manner by any of the observation made in the said judgments. If permissible in law, the appellant can take resort to any remedy including arbitration, in accordance with law, especially when nothing has been observed by the Courts below which would debar him from taking recourse to the said remedy.

The appeal is, accordingly, dismissed with above observations.

February 15, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**