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

RSA-2856-2013 (O&M)

Date of decision : 11.01.2016

Additional District Registrar, Birth and Death-cum-Deputy Civil
Surgeon, Jhajjar

...Appellant

Versus

Pardeep Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Garg, Addl. A.G., Haryana.

Mr. Jitender Nara, Advocate
for the respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is in regular second appeal against the the concurrent finding of the fact and law, whereby the suit for declaration and mandatory injunction, has been decreed.

Mr. Vishal Garg, Addl. A.G. Haryana, learned State counsel appearing on behalf of the appellant-defendant submits that the respondent No.1 filed a suit for declaration to the effect that his date of birth is 08.02.1993 and mandatory injunction be

passed, to enter the date of birth in the Register of Birth and Death. The trial Court erroneously decreed the suit. However, the appeal filed against the judgment and decree was barred by law of limitation, accordingly dismissed the same not only on the ground of delay but as well as on merits. The appeal was barred by the delay of 12 days, therefore, the lower Appellate Court dismissed the appeal on this very technical reasons .

Mr. Jitender Nara, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the judgment and decree of the Courts below, much less, no substantial questions of law arises for determination of this Court.

I have heard the learned counsel for the parties and appraised the paper book.

The appellant-defendant have not disputed birth entry as recorded at later stage. The case was rejected on the ground that birth entry already exists in the record in the name of Karamjit Singh and Karamjit Singh having the same parentage. Birth certificate Ex.DW1/2 proved by the defendant consisted the similar name of the father and mother, but the cross-examination of DW-1 reveals that Karamjit Singh was born out of wedlock of Vedpal and Anita Devi. It has, not proved on record that the respondent No.1-plaintiff Pardeep Kumar was born out of the same parents, therefore, both the Courts below in my view have rightly rejected the defence of the appellant.

On the other hand, the respondent No.1-plaintiff has proved his date of birth by examining the witnesses PW2 Anita Devi, PW3 Santosh, PW-4 Bhagat Singh and as well as detailed mark card of Senior Secondary Examination Ex.P-2. The evidence of the respondent No.1-plaintiff has gone un-rebutted. Even though, the appeal was barred by the law of limitation, but the fact remains that there was no substance in the appeal, even if, it been filed within limitation, as the appellant-defendant has not been able to lead any corroborative evidence, contrary to, what has been led by the respondent No.1-plaintiff. In my view, it would be a futile exercise in condoning the delay and remanding back the matter to the lower Appellate Court to decide the case on merits.

Keeping in view of the aforementioned reason, the delay cannot be ground for dismissal of appeal before lower Appellate Court, but on merits. I do not intend to differ with the findings rendered by the Courts below decreeing the suit, much less, no substantial questions of law arises for determination.

Accordingly, the appeal is dismissed.

11.01.2016
yogesh

(AMIT RAWAL)
JUDGE