

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 588 of 2016 (O&M)

Date of decision:29.4.2016

Sucha Singh and others

... Appellants

versus

Rachhpal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Manu Loona, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J. (Oral)

CM No.5434-C of 2016

By this application, the applicants-appellants seek restoration of the appeal, which was dismissed for non-prosecution, vide order dated 12.4.2016.

For the reasons stated in paras No.3 and 4 of the application, the same is allowed and the main appeal is ordered to be restored at its original number and is taken up for hearing today itself, no notice having been issued to the respondent.

CM No.1638-C of 2016

For the reasons stated in paragraphs 3 to 5 of the application, the delay of 18 days in refiling the appeal is condoned.

The application is allowed.

RSA No.588 of 2016

1. This appeal has been filed against the findings of the learned Courts below to the effect that the cracks, which appeared on the wall of the

of the house of the respondent-plaintiff, were a result of a pit dug by the appellants-defendants in their property, immediately adjoining to that of the respondent-plaintiff. As per the report of the Draftsman (PW2), who had prepared site plan (Ex.P3), on account of accumulation of water in the manure pit dug by the appellants-defendants, the foundation of the house of the respondent-plaintiff had become weakened. The respondent-plaintiff also produced photographs (Ex.P5 to Ex.P10) to prove his claim. On a perusal of the aforesaid evidence, which was not shown to have been rebutted by the appellants-defendants by leading any evidence, the suit of the respondent-plaintiff was partly decreed to the extent that the appellants-defendants were directed to fill in the pit and to get the cracks in the walls of the house of the respondent-plaintiff repaired at their own costs, or, as eventually held by the learned lower appellate Court, to compensate the respondent-plaintiff with Rs.40,000/-, along with interest @ 6% from the date of decree till realization, (with either of the two options available to the appellants).

2. The relief qua usage of a passage abutting the wall of the respondent-plaintiff, was specifically declined to him, by the Courts below.

3. Learned counsel for the appellants submits that the Draftsman (PW2), in his cross-examination, admitted that he had not assessed the quality of the construction of the house of the respondent-plaintiff. As such, it is contended that with the quality not assessed, it cannot be said that the manure pit dug on the property of the appellants-defendants itself caused damage to the walls of the house of the respondent-plaintiff.

4 A perusal of the judgments of the learned Courts below shows

that to rebut the aforesaid report of the Draftsman, accompanied by the photographs showing the manure pit dug up immediately adjacent to the wall of the house of the respondent-plaintiff, with water in it, no evidence was led by the appellants-defendants to even try and show that it was not a result of water that had collected in the pit but was a result of old, sub-standard or weak construction that the cracks had appeared.

5. In view of the above, it being a pure finding of fact and a concurrent finding by the two Courts below, this Court is not inclined to interfere with the same in this second appeal filed by the appellants, such finding not having been shown to be perverse in any manner. Consequently, this appeal is dismissed in limine, with no order as to costs.

29.4.2016
pk

(AMOL RATTAN SINGH)
JUDGE