

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2233 of 2014 (O&M)
Date of decision : April 22, 2016

Bindu Maira and another

..... Appellants

Versus

**Cantonment Board through Cantonment Executive Officer,
Amritsar**

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dheeraj Chawla, Advocate
for the appellants.

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-plaintiff is aggrieved of the dismissal of the suit claiming injunction against the respondent-Board from not demolishing any part of the building i.e. Bungalow No.7, Amritsar Cantt.Amritsar.

Learned counsel appearing on behalf of the appellants submits that the plaintiffs are owners in possession of the building aforementioned after transfer in their favour was free from all encumbrances. The application dated 7.7.1997 was submitted for construction of boundary wall and permission was granted on 28.10.1997 for construction of the boundary wall of bungalow No.7 to the height of 2.50 feet. To the utter surprise of the plaintiff, a notice

under Section 185 of Cantonment Act, 1924 was served upon Tilak Raj and G. S. Dhillon, who had no concern with the suit property as G. S. Dhillon was appointed attorney for some specific purpose. The construction was more than one year old and could not have been demolished, though the Estate office, Jalandhar Circle, Jalandhar has also served notice dated 5.4.2004 under Section 5-B (1) of the Public Premises (eviction of unauthorized occupation) Act, 1971. Vide order dated 22.2.2005 estate office ordered for demolition of alleged unauthorized construction, against which, the plaintiffs have preferred an appeal and the same is pending before the Court of Additional District Judge, Amritsar and the operation of the impugned order has been stayed.

Both the courts below have not noticed the aforementioned facts and declined the relief. He further submits that the delay of 257 days in filing the appeal was un-intentional as the reasons explained in the application were sufficient to condone the delay.

I have heard learned counsel for the appellant and appraised the paper book and of the view that it has not surfaced as to what happened after filing of the appeal before the Additional District Judge, challenging proceedings initiated under Public Premises (eviction of unauthorized occupation) Act, 1971. PW-2 Mehnga Ram spilled the beans in the cross-examination, he stated that he had heard name of Cantt. Club and the same is being run after the partition of main bungalow, and board of Cantt. Club affixed outside the bungalow No.7. He admitted as correct that Junior

Engineer & Engineer of Cantonment Board visited various areas in the Cantonment. Even the plaintiff did not appear in the witness box. It is settled law that if the person did not appear and have knowledge, would be deprived of the right to put certain questions in the cross examination to ascertain the truth. Moreover the relief sought in the suit was not to demolish the construction illegally once the Cantonment had initiated proceedings under the Public Premises (eviction of unauthorized occupation) Act, 1971.

In my view, the authorities have taken action in accordance with law and having not been able to get the relief in those proceedings, the suit ex facie was not maintainable. No explanation, much less reasonable explanation has come forth for seeking condonation of delay. The explanation in the application is a coined story. No doubt, that the law of limitation is liberal but facts and circumstances of each case has to be seen. Once the appellant-plaintiff has been very callous and negligent in filing the appeal, I am of the view that even explanation given in the application is not justified.

Accordingly, the appeal is dismissed on the ground of delay and as well as on merits.

(AMIT RAWAL)
JUDGE

April 22 , 2016
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