

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

RSA No. 3411 of 2014 (O&M)

Date of decision : 03.05.2016

Malkiat Singh

..... Appellant(s)

Versus

State of Punjab & ors.

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. P.S. Kanwar, Advocate,
for the appellant(s).

JITENDRA CHAUHAN.J.

CM-7871-C-2014

Prayer in this application is for condoning the delay of 10 days in filing the appeal. It is averred in the application that due to sudden ill health of the wife of the appellant, he could not contact his counsel at Chandigarh for filing the instant appeal in time.

Keeping in view the averments made in the application which is duly supported by an affidavit of the appellant, the delay which has occurred seems to be neither intentional nor with an ulterior motive. In these circumstances, the application is allowed and the delay of 10 days in filing the appeal is condoned.

CM-7872-C-2014

There is delay of 18 days in re-filing the appeal. It is mentioned in the application that the present appeal was filed on

31.03.2014 and the same was returned on 01.04.2014 with certain objections. The appellant after obtaining those documents sent the same to his counsel through courier, but the clerk of the counsel inadvertently put those documents in another file. Therefore, the delay of 18 days occurred.

Keeping in view the averments made in the application and the fact that the application is supported by a duly sworn affidavit, the delay of 18 days in re-filing the appeal stands condoned. The application is allowed.

Main case

Plaintiff, Malkiat Singh has filed this second appeal, having been non-suited by both the Courts below.

It is the case of the plaintiff-appellant (for brevity 'the appellant') that he is owner in possession of residential house marked by letters 'XYZB' and haweli marked by letters 'CDEFG' shown in yellow colour in the site plan attached with the plaint situated in Village Khadiala Sainian, Tehsil and District Hoshiarpur. There is a street in which gate of the house of the appellant is affixed at point 'AB'. There is also gate at point 'CD' which opens into the haweli of the appellant and is the only way to enter the house as well as haweli. Defendant/respondent-Gram Panchayat is inimical towards the appellant due to party faction in the village. The defendant/respondents (for brevity 'the respondents') in connivance with each other are adamant to change the level of the street at point 'ABCD' shown in red

colour in the site plan attached. Memo no. 1125 dated 23.09.2002 and Memo no. 1177 dated 20.12.2003 were illegally got issued by respondent No. 3 asking the appellant to remove the ramp. Hence the suit.

Respondent Nos. 2 and 3 contested the suit and filed separate written statements controverting the averments made in the plaint. It is pleaded that since the proposed work, as alleged by the appellant, has already been completed, the suit is not maintainable. The appellant did not remove the ramp despite notices. Police help was also sought in accordance with law and the ramp had already been removed much earlier to the filing of the suit. It is further submitted that in fact it was an obstruction of 12 feet in length, 5 feet in width and 3 feet in height which caused inconvenience and the same was removed as per law.

The learned trial Court after hearing the learned counsel for the parties and evaluating the material available on record dismissed the suit of the appellant vide judgment and decree dated 11.01.2012. First appeal preferred by the appellant has been dismissed by learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 17.12.2013. Feeling aggrieved, the appellant has filed the second appeal.

The learned counsel for the appellant vehemently contended that both the Courts below failed to appreciate the fact that no one from the village has stepped into the witness box to say that due

to construction of ramp any inconvenience is caused to the villagers. Gurmit Singh (DW-1), who is none other than Ex-Sarpunch of Gram Panchayat and is inimical towards the appellant, is not a truthful witness and his evidence cannot be relied upon. The appellant was not only the one who has constructed the ramp but everyone in the village has built the ramp over the street to facilitate ingress and egress to their houses.

I have heard learned counsel for the appellant and perused the case file.

The pleading of the parties and the evidence on record clearly suggest that it is the appellant, who is creating mischief by constructing ramp to connect his house and haweli through the street. The appellant while appearing in the witness box as PW-1 and his wife Gurjit Kaur (PW-2) have admitted in most unambiguous words that level of the street is lower than that of the house as well as haweli of the appellant. That being so, construction of ramp to the height of 3 feet would certainly obstruct the movement in the street. It is also established on record that the Gram Panchayat had taken up the matter with competent authorities and even sought police assistance to remove the ramp so as to ensure user of the street by the other inhabitants of the village. Thus, it does not lie in the mouth of the appellant to say that other villagers have also raised similar ramps and that none of the villagers had come forward to depose against him. It cannot be said that DW-1, Gurmit Singh has deposed falsely against

the appellant rather his evidence is trustworthy and capable of credence. Since the street is vested in the Gram Panchayat and is managed by it, it is the sole prerogative of the Gram Panchayat to see as to at what level the street is to be maintained. The appellant could not be allowed to perpetuate the wrong being done by him. The appellant appears to be least bothered for the inconvenience of the other residents of the village. Most of the documents relied upon by the appellant, are in the shape of complaints having been made against political opponents. This Court finds that plea of the appellant is undeserving of acceptance since he has not approached the Court with clean hands. It is now axiomatic that relief of injunction is an equitable relief and he who seeks equity must do equity. Legally unwarranted act of the appellant taints his hands and instantly disentitles him from seeking the equitable relief of injunction. The learned lower Court rightly held that the level of the street had already been reduced by lifting the earth on 28.04.2004 and that the relief so sought by the appellant had become defunct. The State cannot be restrained from undertaking social measures in the larger interest of public at the whims and fancies of unscrupulous persons.

There is concurrent finding of both the Courts below to non-suit the appellant holding that the appellant has no case at all. Said finding is fully justified by the evidence on record and is neither shown to be perverse or illegal nor based on misreading or misappreciation of evidence. Consequently, the said finding does not

call for interference in exercise of second appellate jurisdiction. No question of law much less substantial question of law arises for adjudication in this second appeal. The appeal is meritless and is, therefore, dismissed in limine.

03.05.2016

sumit

(JITENDRA CHAUHAN)
JUDGE