

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. No. 9949-C of 2014 &
RSA No. 4295 of 2014

Date of Decision: 18.02.2016

Suresh Kumar @ Subhash

.....APPELLANT

VERSUS

State of Haryana and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Brijender Kaushik, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 9949-C of 2014

Prayer in this application is for condonation of delay of 186 days in re-filing the appeal.

Prayer in the application is based upon the plea that after the filing of the appeal, some objections were raised by the Registry and the paper-book was returned. The clerk of the counsel for the applicant/appellant collected the said paper-book and because of the oversight of the clerk, the paper-book was not brought to the notice of the counsel and, therefore, the said objections could not be removed in time and the appeal re-filed. However, when the same came to the knowledge of the counsel, he had removed the said objections and re-filed the present appeal, which has resulted in delay of 186 days in re-filing. The delay is neither deliberate nor intentional and no benefit has been claimed in favour of the applicant/appellant.

The application is supported by the affidavit of the clerk of the counsel for the applicant/appellant. The counsel has also accepted his mistake at the time of arguments. In view of the above, the present application is allowed. Delay of 186 days in re-filing the appeal stands condoned.

RSA No. 4295 of 2014 (O&M)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Ambala dated 21.08.2012, whereby the suit for declaration to the effect that the date of birth of the appellant/plaintiff is 03.04.1961 and not 18.03.1969, as recorded in the matriculation certificate issued by the Haryana School Education Board, Bhiwani and a consequential relief of mandatory injunction directing the said respondent-Board to make necessary corrections in the record and issue a fresh matriculation certificate to the appellant-plaintiff with correct date of birth, stands dismissed, appeal against which has also been dismissed by the Additional District Judge, Ambala, on 04.09.2013.

2. It is the contention of the learned counsel for the appellant that the father of the appellant-plaintiff being a rustic farmer had wrongly got entered the date of birth of the appellant-plaintiff in the school records as 18.03.1969 whereas the birth certificate Ex. PA, which has been produced on record, clearly depicts the date to be 03.04.1961 and, therefore, the mistake, which has crept in the records of the Haryana School Education Board, Haryana, Bhiwani, should be corrected accordingly and a fresh matriculation certificate be issued to him by recording the actual correct date of birth of the appellant-plaintiff. He contends that the birth certificate is a conclusive proof with regard to the factum of his date of birth being

03.04.1961 and thus, the dismissal of the suit of the appellant-plaintiff by the Courts below cannot sustain.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments but do not find any ground for interfering in the present appeal as the respondents have not been able to co-relate the records as per the birth certificate Ex. PA brought on record with that of the appellant-plaintiff.

4. In the birth certificate, the name of the child is mentioned as Subhash whereas the record shown on the case file pertains to Suresh. There is nothing on record which would indicate that the name of the appellant-plaintiff is Subhash or that he is also known by the name of Suresh. In the absence of there being any evidence to that effect, the said birth certificate, which is in the name of Subhash, cannot be said to be that of the appellant-plaintiff. The findings, thus, recorded by the Courts below cannot be faulted with.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

February 18, 2016