

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

CR No. 4025 of 2003 (O&M)

Date of Decision: November 13, 2017

Upkar Kaur and others

...Petitioner

Versus

Buta Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. M.L. Saggar, Sr. Advocate
Ms. Veenu Garg, Advocate
for the petitioners.

Mr. H.S. Deol, Advocate
for respondents no.1 to 7.

ANITA CHAUDHRY, J.

CM-6011-CII-2013

This is an application for restoration of the revision petition which was dismissed in default vide order dated 20.02.2013.

For the reasons set out in the application, which is supported by an affidavit, same is allowed. Order dated 20.02.2013 is recalled and the main revision petition is ordered to be restored to its original number and is taken up on Board today itself for hearing.

MAIN CASE

This revision is directed against the order dated 27.05.2003, passed by the Additional District Judge, Amritsar, who

refused to condone the delay of 42 days and dismissed the first appeal filed against the judgment of the lower Court.

The record had been burnt, however, the copy of the lower Court record only is available. Copy of some of the summons issued by the first Appellate Court are also available. The parties have also placed on record some documents for reconstruction of record.

A suit was filed in January 1991 by the sons of Ajaib Singh seeking declaration that they were the owners of the disputed property. After a contest, the suit was decreed. The defendants were restrained from dis-possessing the plaintiffs from the property. The plaintiffs were held to be owners in possession of the property on the basis of the sale deed referred therein. The defendants filed an appeal but with a delay of 42 days. The application for condonation of delay was dismissed and aggrieved by that, this revision has been filed.

It is not necessary to burden the record but only the essential facts are being referred. The reasons given in the application for condonation of delay were that two of the appellants namely Upkar Kaur and Satinder Kaur were widows and the other appellants except appellants no.2 & 3 were minor. It was pleaded that appellants no.2 & 3 were confined in Jail in a criminal case and there was no male member in the family and it was Baldev Singh who used to prosecute the case on behalf of the appellants but he was also under the shadow of threats and he did not inform them and appellants no.1 to 4 were not conversant with the intricacies of law and the delay had occurred. It

was pleaded that they had come to know of the judgment dated 16.09.1999 only on 16.11.1999 and the delay was not intentional.

The first Appellate Court gave notice to the other side who filed the reply opposing the application and pleaded that there was no threat and false plea had been taken to gain sympathy from the Court and they had knowledge of the decision.

The first Appellate Court framed issues. Both the sides led evidence. The first Appellate Court in its 28 page order dismissed the application holding that the delay on the part of the appellants was intentional and deliberate and they had failed to prove sufficient cause. It noted that Jaswant Singh and Nirmal Singh who were stated to be in jail knew about the pendency of the case as they had appeared in the Court on 31.08.1999 and knew the stage of the case and they had information that the suit was likely to be decided within a short period. The first Appellate Court minutely went into question as to whether there was a death in that family. It noted that there was no evidence to show that the son of the real sister of Jaswant was admitted in the hospital.

I have heard the counsel for both the sides. The submission on behalf of the petitioners is that it was not a inordinate delay and the delay in filing the appeal was small and two of the appellants were widows and rest of them are their minor children and remaining two appellants were in jail and the first Appellate Court had taken a hard view by dismissing the application as well as their appeal.

It was urged that the endeavor of the Courts have always been to decide the case on merits and Courts are liberal and small delays are condoned and there was a justified cause. It was urged that there is no dispute that the male members were in jail at that time.

On the other hand, the submission is that the law of limitation harshly affects a party and it has to be applied with all its rigour and the Court has no power to extend the period of limitation on equitable grounds and the applicants had failed to give sufficient cause for condoning the delay. Reliance was placed upon ***Basawaraj and another Vs. Special Land Acquisition Officer 2014(1) RCR (Civil) 603*** and ***Kulwant Kaur Vs. State of Punjab 1999(1) RCR (Civil) 474***.

I have gone through the judgments referred to by the respondents. In one of the cases, the appeal had been filed after a delay of five and a half years and it is in that context the Apex Court had observed that law of limitation has to be applied with all its rigour. In ***Kulwant Kaur's*** case (supra), there was a delay of 576 days in filing the appeal, which was dismissed as the grounds were not found to be justifiable.

In the present case, the facts are entirely different. Some of the petitioners were widows, some of the appellants were minors. Two of the appellants who had filed the appeal were confined in jail and some delay in the normal course would have taken place. The delay was not large which should have been condoned. The first Appellate Court had taken a very rigid view by dismissing the application. No

doubt, Jaswant Singh had appeared for his statement but to impute that he knew that the case would be decided within a fortnight thereafter, cannot be accepted. The delay was small and had been reasonably explained and should have been condoned, therefore, I allow this petition and restore the appeal on payment of costs of Rs.25,000/-.

The parties are directed to appear before the District Judge, Amritsar on 29.11.2017. The petitioners would deposit cost of Rs. 25,000/- on the same day. The District Judge, Amritsar would entrust the matter to the successor Court or to any other Court who would decide the appeal as expeditiously as it can and if possible within four months. Since a long time has elapsed since the impugned order was passed, the parties will have to check whether all the parties are alive. If there is any death meanwhile, it would be the duty of the concerned party to file an application for impleading the LRs within one week of the day they appear before the District Judge.

The Registry would send the record which has been received. The counsel appearing for the appellants would place on record the grounds of appeal filed by them and all other documents they had appended to enable the Court below to reconstruct the record.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

November 13, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No