

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 126

Civil Revision No.2698 of 2017 (O & M)
Date of Decision: April 19, 2017

Khila Ram (since deceased) through LR

..... PETITIONER

VERSUS

Kesar Singh (since deceased) through LRs

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Randeep Singh Rana, Advocate, for the petitioner.

. . .

Jaspal Singh, J

1. Through the instant petition, preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated October 06, 2016 passed by the Additional District Judge, Ludhiana, vide which the appeal filed by father of the petitioner has been dismissed on the ground of limitation.

2. Brief facts of the case giving rise to the instant petition are that respondent – plaintiff, Kesar Singh (since deceased) filed a suit for possession by way of specific performance of agreement to sell dated March 04, 2003 in respect of a house measuring 100 square yards situated at Haibowal Kalan, Ludhiana in the area of Gopal Nagar, comprising in Khasra No.38//16 and 38//17, Khata No.1254/1337 – 1255/1338 vide jamabandi for

the year 1996-97. The said suit was decreed vide judgment dated August 09, 2005 passed by the Civil Judge (Junior Division), Ludhiana.

3. Aggrieved against the aforesaid judgment & decree, father of petitioner namely Khila Ram (defendant) preferred an appeal alongwith an application under Section 5 of the Limitation Act, 1963 (for short, 'Act') for condonation of delay in filing the appeal. The lower appellate court, vide impugned judgment/order dated October 06, 2016, while dismissing the application for condonation of delay, the main appeal was also dismissed which necessitated the filing of instant appeal.

4. The only contention raised by learned counsel for the petitioner, while challenging the impugned order, is that the same is absolutely against actual facts and the settled canons of law. Infact, Khila Ram, father of the petitioner, being an illiterate and rustic villager, had been pursuing his case through different counsels who did not give him proper advice for filing the appeal within the prescribed period, on account of which, the delay in filing the appeal has occurred. Infact, the delay in filing the appeal was neither willful nor intention but due to the aforesaid reasons.

5. Learned counsel further contended that ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusal to condone delay can result in a meritorious matter being thrown out at the very threshold defeating the cause of justice. Thus, the court should adopt a liberal view and condone the delay to decide the matter in controversy on merits. Thus, the petitioner should have been given a chance to prefer an appeal and to get the matter in controversy decided on merits after setting aside the impugned order.

6. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutiny of

impugned order, this Court is of the considered view that the contentions put-forth by learned counsel for the petitioner do not carry any weight in view of the settled principles of law.

7. An appeal alongwith an application under Section 5 of the Act has been filed by the petitioner on April 10, 2014 against judgment & decree dated August 09, 2005 i.e. after a gap of more than 9 years. In case ***P.K. Ramchandran vs. State of Kerala, 1997(7) SCC 556***, the Hon'ble Apex Court has observed that the essential pre-requisite of exercising discretion to condone the delay is that the court must record its satisfaction that the explanation for delay was either reasonable or is satisfactory. Similarly in another case captioned as ***Balwant Singh vs. Jagdish Singh & others, 2010(6) SCALE 749***, the Hon'ble Supreme Court, while deciding an application under Order XXII Rule 9 CPC and Section 5 of the Act has held that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. It was further observed that justice must be done to both parties equally. Then alone the ends of justice can be achieved.

8. Adverting to the facts and circumstances of the instant case, the only explanation furnished by learned counsel for the petitioner for an inordinate delay of more than 9 years is that the petitioner was an illiterate

who did not give him proper advice for filing the appeal within the prescribed period. But, this explanation does not appeal to reason. Even a layman is not going to accept it, what to talk of a prudent person, particularly when a number of other developments have taken place during the interregnum period of more than 9 years. A person cannot be expected to sit idle for such a long period, especially when a decree has been passed against him, rather, the filing of appeal as well as application for condonation of appeal is nothing but a novel device adopted to delay execution of decree dated August 09, 2005. On account of negligence, default or inaction of the petitioner, a valuable right has accrued to the respondent – DH and it cannot be scuttled down on the mere asking of petitioner, and that too, that proper advice was not given by his different counsels. Even the name of any of the counsel who was engaged for advice by the petitioner or his father has not been disclosed. Thus, this Court does not find any reason to meddle with the findings recorded in impugned order October 06, 2016 passed by the lower appellate court. This Court is of the considered view that the impugned order is absolutely in consonance with the settled principles of law and the application for condonation of delay has rightly been dismissed.

9. In the light of what has been discussed above, the instant petition being devoid of merits is dismissed.

10. No order as to costs.

April 19, 2017
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No

