

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

**Civil Revision No.2969 of 2017 (O&M)
Date of Decision:23.08.2017**

Gittan Singh

...Petitioner

Versus

Dr. Kewal Krishan Garg etc.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravish Bansal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-petitioner has challenged the order dated 24.10.2013 and 28.02.2017.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 05.05.2003 against one Sh. Sham Sunder. Defendant appeared and filed written statement. However, defendant did not lead any evidence. Therefore, the suit was decreed vide judgment and decree dated 20.10.2008.

Sham Sunder had sold the entire disputed property through sale deeds dated 22.04.2004, 18.05.2004 and 01.06.2004. These sale deeds were executed after taking no objection from the Estate Office, Chandigarh. The subsequent purchasers, on coming to know of the decree passed, filed an appeal before the first Appellate Court along with an application for allowing leave to appeal as the subsequent

purchasers were not party to the suit. Learned first Appellate Court vide order dated 24.10.2013 allowed the application.

Learned first Appellate Court also condoned the delay after noticing that the subsequent purchasers were not party to the suit. The reasons assigned by the Court for condoning the delay are extracted as under:

'Perusal of the case file reveals that on the one hand, Gittan Singh had become owner of the suit property through process of the Court, whereas, the appellants had purchased the suit property from the original owner itself. This Court is to see that who is actually the bonafide purchaser of the suit property and this fact can be ascertained only when the appellants are given the opportunity to contest the present litigation and that fact can be materialized only by allowing the present application for condonation of delay in filing the present appeal. At this stage, it would also not be out of place to mention here that delay in filing the appeal cannot be attributed to the appellants because they are in possession over the demised premises since 2004 and their title had not been challenged by anybody from any quarter and the moment they had got the intimation with regard to the dispute of their title, they had become hyper active and had thrashed the entire relevant record from the concerned quarters including the Court and the Estate Office, UT, Chandigarh and had come to know with regard to passing of the civil suit decree in favour of Gittan Singh and thereafter they had lost no time in approaching the Court. At this stage, this Court finds it appropriate to maintain that the present appellants along with Gittan Singh both are necessary parties for deciding the present litigation in a lawful and justified manner as on the one hand Sham

Sunder himself had transferred the title of the suit property in favour of the appellants and on the other hand, Gittan Singh had become owner of the suit property through the process of the Court. Sham Sunder has accepted the money from both the parties and now it is between them to establish that who was having the better title and for deciding this dispute, it is necessary that both the parties are allowed to contest the litigation and in these circumstances, application for condonation of delay stands allowed and the case stands adjourned to 15.3.2017 for advancing arguments.'

Learned counsel for the petitioner has submitted that the first Appellate Court has not recorded any finding that there was sufficient reason for condoning the delay. He has further submitted that the entire approach of the Court was perverse. He has further submitted that in view of the rule of lis pendens, the subsequent purchasers could not be made party and they could not be permitted to file an appeal. He further submits that huge unexplained delay of 5 years has been condoned, although there was no sufficient cause.

I have considered the submissions made by both the learned counsels and with their able assistance gone through the record.

It is not in dispute that the present appeal has been filed by the subsequent purchasers. Subsequent purchasers have purchased the property after getting no objection certificate from the Estate Office. Even the Estate Office was not having knowledge about the pendency of the suit.

In these circumstances, subsequent purchasers at least have a right to file an appeal and contest the case on merits. No doubt, the

sale in their favour is hit by the rule of lis pendens. However, the subsequent purchasers have stepped into shoes of the original defendant. It is not in dispute that original defendant after filing written statement did not contest the suit. Original defendant did not even file the appeal. In these circumstances, learned counsel for the petitioner is wrong in asserting that no reason has been given by the first Appellate Court to condone the delay.

Learned counsel for the petitioner has further submitted that the approach of the Court was already perverse. He submitted that the learned first Appellate Court granted injunction without even condoning the delay. He has referred to the provisions of Order 41 Rule 3A to contend that the Court could not have granted injunction without condoning the delay.

I have considered the submissions. However, there is no force in the submission of learned counsel. The appeal was entertained on 24.10.2013 and stay was granted. The petitioner has filed the revision petition after a period of 4 years in 2017, particularly when the application for condonation of delay had already been allowed. In these circumstances, this Court would not be justified in interfering with the order passed on 24.10.2013.

Learned counsel for the petitioner has further submitted that the purchase made by the respondent is hit by the rule of lis pendens. There is no doubt that any purchase made by the subsequent purchasers during the pendency of the suit would be hit by rule of lis pendens. However, at the same time it is to be considered when the subsequent purchasers have stepped into shoes of the original defendant. The

subsequent purchasers would at least, are entitled to contest the appeal on merits.

In view of discussion made above, the revision petition is dismissed. However, it is noticed that the first Appeal is pending for the last 4 years. Therefore, the first Appellate Court is requested to decide the appeal within a period of 3 months from the date of receipt of certified copy of the judgment.

23.08.2017
parveen kumar

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No