

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

CR No.5454 of 2015

Date of Decision: 17.07.2017

Bachittar Singh
Versus

.....Petitioner

Notified Area Committee, Shahkot and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vishal Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(ORAL)

Notice of motion was issued on 24.08.2015.

Notified Area Committee, Shahkot is the only contesting respondent. The said Committee has been impleaded through President as respondent No.1 and through Executive Officer as respondent No.2. Respondents No.2 and 4 have already been proceeded against ex parte vide order dated 18.01.2016. respondent No.3 was one of the co-plaintiff, therefore, according to the learned counsel for the petitioner, respondent No.3 is not a contesting party and his service was dispensed with vide order dated 05.04.2016. Similarly, impleadment of legal representatives of deceased respondent No.5 was also dispensed with vide order dated 05.04.2016. In view of above, service is taken to be complete.

Petitioner has filed this revision petition against the order dated 03.03.2015 passed by Additional District Judge, Fast Track Court (Adhoc), Jalandhar, whereby application under

Section 5 of the Limitation Act for condonation of delay in filing the first appeal was dismissed.

Petitioner is son of Kartar Kaur, who was co-plaintiff along with Gurpreet Singh and Mohan Singh. The mother of the petitioner along with aforesaid co-plaintiffs filed a suit for permanent injunction against the Notified Area Committee, Shahkot through President as defendant No.1 and through Executive Officer as defendant No.2.

The suit was dismissed vide judgment and decree dated 23.07.2010 by the Additional Civil Judge (Senior Division), Nakodar. At the time of decision of the suit, the petitioner was abroad. The mother of the petitioner died on 31.08.2010 and he came to India on 01.09.2010 for the purposes of last rites of his mother and he could not confirm the outcome of the decision of the suit.

The appeal was filed with an application under Section 5 of the Limitation Act seeking to condone the delay of 17 months, 8 days in filing the appeal. In the application under Section 5 of the Limitation Act, it was pleaded that after the death, mother of the petitioner Kartar Kaur left Bachittar Singh and Jagir Singh as her Class-1 legal heirs. Before the decision of the Court, Gurpreet Singh also left India and shifted to England, therefore, none of the co-plaintiffs were interested in

filing any appeal and the appeal was filed by the petitioner alone.

Learned counsel for the petitioner submitted that the petitioner came to India only for the purposes of last rites of his deceased mother. No intimation regarding pendency or decision of the suit could be verified by him. It was only on 25.12.2011, he came to know about the decision of the trial Court and thereafter, the appeal was filed promptly on 03.01.2012.

Additional District Judge, Fast Track Court (Adhoc), Jalandhar has dismissed the application primarily on the ground that when the petitioner came to India on 01.09.2010 for attending the last rites of his mother, he could have verified the decision of the suit and could have filed the appeal.

I have considered the submissions made by learned counsel for the petitioner.

There is no opposition by the respondents. Respondent No1 has not appeared despite due service.

In view of observations made in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013(4) CivCC 399** and **State of Rajasthan and another Vs. Bal Kishan Mathur (D) through LRs and others, 2013(4) CivCC 805**, I am of the view that the Court should be liberal in condoning the delay so as to advance substantial

cause of justice. Meritorious matter should not be thrown at the verge of technicalities. The cause of justice should prevail, however, intentional omission should not be condoned. A liberal and pragmatic approach should be adopted while condoning the delay.

In my considered view the ground on which the application was dismissed by the lower Appellate Court is not sustainable as it is the common knowledge that during course of sufferance i.e. on the demise of mother of the petitioner, the petitioner was not expected to be vigilant enough to verify the decision of the suit. Moreover that was a subjective approach of an individual and cannot be generalized in the manner as suggested by the lower Appellate Court.

Considering the facts and circumstances of the case, I deem it appropriate to accept this revision petition. Therefore, impugned order dated 03.03.2015 passed by Additional District Judge, Fast Track Court (Adhoc), Jalandhar is set aside.

Both the parties are directed to appear before the Additional District Judge, Fast Track Court (Adhoc), Jalandhar on 31.07.2017.

17.07.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No