

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

**CR No.7374 of 2014(O&M)
Date of Decision: 11.09.2017**

Rajwanti and othersPetitioners

Versus

Tasvir and others ... Respondents

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

Present:Mr. K.S. Malik, Advocate
for the petitioners.

Mr. Chander Kant Thakur, Advocate and
Mr. G.C. Shahpuri, Advocate
for respondents No.1 and 2.

None for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed this revision petition against the judgment and decree dated 11.09.2009 passed by Additional Civil Judge (Senior Division), Meham and judgment dated 23.04.2014 passed by Additional District Judge, Rohtak, dismissing the appeal along with application for condonation of delay.

[2]. Plaintiff/Dharambir filed a suit for declaration against the defendants challenging the release deed dated 19.04.2000

and mutation sanctioned in pursuance thereof. Plaintiff also sought consequential relief of permanent injunction, restraining the defendants from alienating the suit property.

[3]. Defendant No.1 is brother, defendant No.2 is mother and defendant No.3 is sister of the plaintiff. On issuance of notice of the suit, defendants appeared and filed their separate written statements. Issues were framed on 12.01.2009 and thereafter, four effective opportunities were afforded to the plaintiff to lead his evidence. Plaintiff failed to lead any evidence either oral or documentary and the evidence of the plaintiff was closed by order of the Court dated 11.09.2009. Since, there was no evidence led by the plaintiff, defendants also made a statement at the bar that they would not lead any evidence.

[4]. In the absence of any evidence led by the plaintiff, the suit was dismissed with cost vide judgment and decree dated 11.09.2009 itself by the trial Court. An appeal was preferred by the LRs of the plaintiff as the plaintiff had expired. An application for condonation of delay was also filed by the defendants/petitioners that after the death of Dharambir, the petitioners filed an application for bringing on record, the legal representatives of deceased plaintiff/Dharambir. The reason for delay was stated to be the assurance given by the defendants/respondents not to proceed with the case and that is

why, the plaintiff did not lead any evidence. The assurance given by the defendants/respondents was to the effect that they would give the share of Dharambir to his LRs.

[5]. Petitioners further claimed that they were not aware about the decision passed by the trial Court and only came to know about the judgment and decree of the trial Court when they went to Halqa Patwari on 04.09.2013. Halqa Patwari gave a copy of the judgment and decree dated 11.09.2009 to petitioner No.1. Thereafter, appeal was filed on 25.09.2013 along with an application under Section 5 of the Limitation Act seeking to condone the delay of 3 years and 11 months in filing the appeal.

[6]. Learned counsel for the petitioners submitted that the delay in filing the appeal was not intentional, rather the same was due to the facts as enumerated above. After obtaining information from Halqa Patwari on 04.09.2013, an application was moved for obtaining the certified copy of judgment and decree, which was prepared on 15.09.2009 and the appeal was preferred on 24/25.09.2013. Learned counsel relied upon **Mrs. Saroj and others Vs. Sh. Baljeet Singh and another, 2010(3) RCR (Civil) 929** and **Smt. Chhindo Vs. Manjit Kaur and others, 2013(2) RCR (Civil) 595** and contended that if the plaintiffs/appellants have a good case on merits, delay should

be condoned as good case itself constitutes a sufficient cause for condonation of delay.

[7]. I have considered the submissions made by both the sides.

[8]. Trial Court proceeded to close the evidence of the plaintiff after affording four effective opportunities to lead evidence. In the event of failure on the part of the plaintiff to lead any evidence, the evidence of the plaintiff was closed by order of the Court on 11.09.2009. Thereafter, a delay of 3 years and 11 months had occurred in filing the first appeal before the Lower Appellate Court. There cannot be any dispute with regard to the fact that meritorious matter should not be thrown out at the verge of technicalities. The law laid down by the Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, AIR 1987 Supreme Court 1353** can be relied in the aforesaid context. However, in the instant case, there was no evidence on record to even remotely suggest that there was a good case in favour of the plaintiffs/petitioners. No evidence was led by the plaintiffs. In the absence of any evidence, this Court cannot presume existence of any meritorious case in favour of the plaintiffs.

[9]. It is an admitted case of the plaintiffs that they did not lead any evidence on the asking of the defendants. It cannot be

understood as to how and in which manner, they were sufficiently prevented from leading evidence at the instance of the party with whom they were contesting in the Court of law. There was no understanding between the parties in writing or by any instrument that defendants had agreed to give due share of Dharambir to his legal representatives. Except oral assertion, nothing more has been alleged in the context of such a bilateral understanding between the parties, which ultimately prevented the plaintiffs from leading evidence and also became pathetic in pursuing the litigation in the Court of law. There cannot be any dispute with regard to aforecited precedents **Mrs. Saroj and others and Smt. Chhindo's cases' (supra)**, but those judgments are based on existence of a good case before the trial Court. In the present case, there is no such foundation laid down by the plaintiffs before the trial Court. Being a case of no evidence, trial Court dismissed the suit.

[10]. In view of above, I find that the present revision petition is on different footings. The delay of 3 years and 11 months has not been explained by the petitioners on any satisfactory ground. Valuable right has already been accrued in favour of the respondents and the same cannot be snatched after a period of 3 years and 11 months.

[11]. In view of above, the present revision petition is found

to be totally bereft of merits and the same is accordingly dismissed.

11.09.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No