

CR No.7407 of 2017

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

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Date of Decision : 01.12.2017

Jasvir Singh.

...Petitioner

Versus

Karam Singh & ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present : Mr. Amrik Singh, Advocate
for the petitioner.

Mr. Sandeep Sharma, Advocate
for the respondents.

B.S. WALIA, JUDGE.,

[1]. Challenge in this petition under Article 227 of the Constitution of India is to order dated 07.09.2017 (Annexure P-4) as also judgment dated 07.09.2017 (Annexure P-5), passed by the learned Addl. District Judge, Ludhiana, dismissing the application filed by the petitioner-appellant (hereinafter referred to as the petitioner) for condonation of delay and consequentially, the appeal against judgment and decree dated 01.06.2012 passed by the Court of Shri Atul Kamboj, the then learned Civil Judge (Junior Division), Ludhiana, whereby the suit filed by respondent No. 1 Karam Singh (since deceased) against the petitioner and respondent No. 2 & 3's father i.e. Mohan Singh was decreed with costs. It needs noticing here that out of the three children of the deceased defendant Mohan Singh, i.e. petitioner and respondent Nos. 2 & 3, only the petitioner chose to file appeal against judgment and decree dated 01.06.2012 along with an

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application seeking condonation of 970 days delay in late filing of the appeal. As noted above, the application for condonation of delay was dismissed, consequentially so was the appeal.

[2] Brief facts of the case leading to the filing of this revision petition are that admittedly, Mohan Singh was owner of half share while his sisters, Harmohinder Kaur and Gurcharan Kaur were owners of other half share of total land measuring 0B-5B comprised in khasra no. 590 and khata no. 260/338 as entered in jamabandi for the year 1996-97 of village Ghaloti, Tehsil and District Ludhiana. Mohan Singh as well as his sisters expressed their willingness to sell the above said property to the plaintiff/respondent No.1 Karam Singh (since deceased) for a total sale consideration of Rs.1,80,000/-.

[3] Subsequently, Mohan Singh on his behalf as well as on behalf of his sisters executed agreement dated 05.04.2000 in favour of the plaintiff/respondent No.1 and out of the total sale consideration of Rs.1,80,000/-, Rs.80,000/- was paid as earnest money by the plaintiff/respondent No.1 to Mohan Singh. Time for execution and registration of the sale deed was fixed on or before 04.04.2001. Harmohinder Kaur executed sale deed dated 26.03.2001 in favour of plaintiff/respondent No.1 regarding her share 0B-1B-5B and received a sum of Rs.45,000/- towards sale consideration. Likewise, Gurcharan Kaur also executed sale deed dated 03.04.2011 in favour of plaintiff/ respondent No.1 regarding her share 0B-1B-5B and received sale consideration of Rs.45,000/-. Thus, in all as against total sale consideration of Rs. 1,80,000/- a sum of Rs. 1,70,000/- was received by the vendors i.e. Mohan Singh and his two sisters with balance Rs. 10,000/- to be paid to

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Mohan Singh.

[4] In the aforementioned background, Civil Suit No.70 of 04.03.2002, titled as Karam Singh versus Mohan Singh was filed for specific performance of agreement to sell dated 04.05.2000, with respect to land measuring 2B-10B of Mohan Singh. Suit filed by plaintiff/ respondent No.1 was decreed vide judgment and decree dated 01.06.2012 i.e. Annexure P-1. A perusal of the judgment of the learned trial Court reveals that the defendant-Mohan Singh in his written statement did not deny the execution of the agreement to sell dated 05.04.2000 or for that matter receipt of Rs.80,000/- by him from the plaintiff. Eventually, Mohan Singh expired on 14.03.2012. As has been noted above, the suit filed by the plaintiff/respondent No.1 was decreed on 01.06.2012.

[5] No appeal was filed against the judgment and decree dated 01.06.2012 by the other legal heirs of deceased Mohan Singh i.e. Respondent Nos. 2 & 3 herein. It is only the petitioner who filed an appeal (Annexure P-2) on 29.01.2015 against the judgment and decree dated 01.06.2012 along with an application for condonation of 970 days in late filing of the appeal. The aforesaid application was dismissed by the learned first Appellate Court vide order dated 07.09.2017 (Annexure P-4) and consequently so was the appeal vide judgment dated 07.09.2017 (Annexure P-5).

[6] Application for condonation of delay was filed by the petitioner on the ground that on his release from jail on 05.01.2015, the petitioner inquired about the case from his previous counsel and learnt that the case had already been decided. He could not file the appeal as he was not having any knowledge of the case on account of being in judicial custody

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till 05.01.2015. The application was opposed on the ground that the averments made therein were totally false and frivolous to the knowledge of the petitioner and the petitioner was fully aware of the passing of the judgment and decree. Besides, the other legal heirs of deceased Mohan Singh i.e. respondent Nos.2 and 3 herein were also aware of the judgment and decree. Moreover, as evident from zimni order dated 26.03.2014, the petitioner had been produced before the Court by the jail authorities in compliance of production warrants. Thereafter, again on 28.10.2014, the petitioner was produced before the Court whereupon he sought time for engaging counsel and filing objections. Thereupon, the case was adjourned, but the petitioner did not prosecute the case. In the aforementioned background, while contending that sufficient cause was not made out for seeking condonation of 970 days delay in late filing of the appeal, prayer was made for dismissal of the application as also appeal. [7]. Respondent Nos. 2 and 3 did not put in appearance before the learned first Appellate Court despite publication, accordingly were proceeded ex parte. On the basis of the pleadings in the application and reply in respect thereto, the following issues were framed by the learned first Appellate Court :

1. Whether there are sufficient grounds to condone the delay of 970 days in filing the appeal?OPP
2. Whether the application is false, frivolous and vexatious and is liable to be dismissed/OPR

[8] The petitioner took up the stand before the learned Appellate Court that the judgment and decree was passed on 01.06.2012 against his father on which date he was in Central Jail, Ludhiana in case FIR No.9 dated

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29.12.2011, under Section 22-61-85 of the NDPS Act, Police Station Doraha, in which he was convicted on 05.01.2015 and sentenced to undergo rigorous imprisonment for a period of three years along with fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months. He was released on 05.01.2015 as he had already undergone the sentence and paid the fine. None of his relatives had come to meet him in jail or to tell about the decision of the case. Even his father Mohan Singh had died during the pendency of the suit, therefore, he could not pursue the case and file appeal within the period of limitation and it was only after coming out of jail that he applied for certified copy of the judgment on 20.01.2015. The same was prepared and delivered on 22.01.2015. Thus, there was a delay of 970 days in filing the appeal which may be condoned.

[9] The learned first Appellate Court took into account ignorance feigned by the petitioner in his cross-examination as to whether his mother had appeared as a witness in the main case as also of his being unaware of the pendency of execution petition before the Court of Shri Atul Kamboj, the then learned Civil Judge (Junior Division), Ludhiana, denial of signatures by the petitioner on Mark-A i.e. proceeding dated 31.07.2013, ignorance expressed by the petitioner of being unaware whether he had appeared in the Court of Shri Rachhpal Singh, the then learned JMIC, Payal by stating that he had appeared in numerous courts and did not remember if on 26.03.2014 he had appeared in the Court of Shri Jasvir Singh, the then learned Civil Judge (Junior Division), Ludhiana. The petitioner also feigned ignorance whether the Court of Shri Rachhpal Singh, the then learned JMIC, Payal had passed zimni order

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dated 26.03.2014 and that he had appeared before him. The petitioner also feigned ignorance that on 17.05.2014, he was produced before the Court of Shri Rachhpal Singh, the then learned Addl. Civil Judge (Senior Division), Patiala by the jail authorities. Petitioner, however admitted signatures at Mark-A on Ex.RX, but stated that the same were obtained on blank papers. On 28.10.2014, the execution proceedings were adjourned to 07.01.2015 on the petitioners request for filing objections.

[10] The learned first Appellate Court while taking into account that zimni order dated 26.03.2014 (Annexure R-6) reflected that the petitioner was produced in Court by the jail authorities while order dated 17.05.2014 (Annexure R-7) revealed that his signatures were obtained on production in Court by the jail authorities, besides, as per order dated 28.10.2014 (Annexure R-8) the petitioner had suffered a statement that he would engage a counsel on the next date of hearing and on his request the case was adjourned for filing of objections, concluded that the presence of the petitioner in the execution petition though from custody, falsified his stand in the application for condonation of delay of his being unaware of the judgment and decree as well as execution proceedings. The learned lower appellate court took into account the decision in ***Sudhir Kumar vs. Jugraj Singh 2013 (3) CCC 100*** wherein, it was held that what goes on in Court and what is recorded in Court proceedings has to be taken at its face value and any argument contrary to record, cannot be entertained and the only option to a person disputing the veracity of what is recorded in Court orders is to apply to the very same Court for review, if the Court's observations are not properly reflected in the Court record. The learned first Appellate Court also took into account that the petitioner had made a

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totally incorrect statement about his not being aware of the judgment and decree dated 01.06.2012 as he had been appearing in Court in the execution proceedings. In the light of the aforementioned position, the learned first Appellate court concluded that the petitioner had not been able to explain sufficient cause so as to seek condonation of 970 days in late filing of the appeal, whereas the plaintiff/ respondent No.1 had been able to prove that the application seeking condonation of delay was false, frivolous and vexatious. Accordingly, issue No.1 was decided against the petitioner and in favour of the plaintiff/respondent No.1. Likewise, issue No.2 was decided in favour of the plaintiff/respondent No.1 and against the petitioner/appellant.

[11] When confronted with the aforementioned position, learned counsel for the petitioner contended that neither copy of the execution application was provided to the petitioner in jail nor was judgment and decree dated 01.06.2012 communicated to the petitioner on his appearing in the execution proceedings and only his signatures were taken on the Court file and as the petitioner was in custody from 29.12.2011 till 05.01.2015, whereas the impugned judgment and decree was passed on 01.06.2012, without impleading the petitioner as legal heir of defendant-Mohan Singh, who died on 14.03.2012, the impugned order was legally unsustainable and the appeal ought to have been considered on merit after condoning the delay. Learned counsel further contended that the house in question was the only residential house of the petitioners father, therefore, the petitioner would suffer irreparable loss, if delay was not condoned and appeal ordered to be heard on merits.

[12] I have heard submissions of learned counsel for the parties and

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perused the record with their assistance. The point for consideration in the instant case is as to whether the impugned orders holding that sufficient cause was not made out for condoning 970 days delay in late filing of the appeal are legally unsustainable. Admittedly, judgment and decree dated 01.06.2012 was passed in the civil suit filed against the petitioner's father. The petitioner was in custody w.e.f. 29.12.2011 and was released from jail only on 05.01.2015. If the aforementioned aspect of the matter is seen in isolation of any other fact, then the petitioner is entitled to seek condonation of delay but the fact remains that there has been concealment of material facts in as much as the petitioner did not disclose in the application seeking condonation of delay that he had been produced in the execution proceedings by the jail authorities qua judgment and decree dated 01.06.2012 on 26.03.2014 in the Court of Shri Jasvir Singh, the then learned Civil Judge (Junior Division), Ludhiana, on which date the Court passed an order that the petitioner had appeared in Court. The petitioner also concealed that he was produced on 17.04.2014 before the Court of the learned Civil Judge, Patiala by the jail authorities. Signatures at Mark-A on Ex.RX were admitted by the petitioner but the plea raised was that the same were obtained on blank papers. Petitioner further took up the stand that on 28.10.2014, he did not recollect whether the case was adjourned on his request for filing of objections to 07.01.2015 nor he remembered whether he had ever engaged Shri A.S.Gill, as counsel.

[13] Execution application No. 51 was filed seeking execution of judgment and decree dated 01.06.2012 in the suit filed by respondent No. 1 against the petitioners father for specific performance of agreement to sell dated 5.4.2000. Perusal of zimni order dated 31.07.2013 (Annexure

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R-4) reflects signatures of petitioner Jasvir Singh at Mark-A. Zimni order dated 12.09.2013 (Annexure R-5) reflects the petitioner to have been shown to be behind bars. Zimni order dated 26.03.2017 (Annexure R-6) reflects that petitioner Jasvir Singh LR of JD Mohan Singh was produced before the Court by the jail authorities while zimni order dated 17.05.2014 (R-7) record's presence of the petitioner on production by the jail authorities. Likewise, as per zimni order dated 28.10.2014 (R-8), the petitioner Jasvir Singh suffered a statement that he would engage a counsel by the next date of hearing and on his request, the case was adjourned to 0.01.2015 for filing of objections. In the aforementioned background, stand of the petitioner of his not being aware of the judgment and decree dated 01.06.2012 is falsified as it is settled law that what goes on in Court and what is recorded in Court proceedings must be taken to be correct at its face value and in case of any stand to the contrary, the only option is to seek modification of what is recorded in the court order by moving an application for review of said orders.

[14] In the light of position as noted above, I am satisfied that the stand of the petitioner before the learned first Appellate Court of his not being aware of the proceedings is false. The learned first Appellate Court rightly concluded that the stand taken up by the petitioner in the application for condonation of delay stood falsified from the zimni orders as referred to above. As per the decision of the Hon'ble Supreme Court in ***Pundlik Jalam Patil (D) by L.Rs. vs. Exe. Eng. Jalgaon Medium Project and another 2009(1) PLR 128***, where delay has been sought to be got condoned by a party by making incorrect statement, the incorrect statement in itself is sufficient to reject the application without any further

inquiry.

[15] Another aspect of the matter which needs mention is that out of the total sale consideration of Rs.1,80,000/-, a sum of Rs.1,70,000/- was received by the parties including the petitioners father and only Rs.10,000/- remained to be paid to the petitioners father. However, without going into the merits of the case, I am of the considered view that the petitioner has failed to make out sufficient cause for seeking condonation of 970 days delay in late filing of the appeal. Besides, in view of the false stand taken up by the petitioner before the learned first Appellate Court for seeking condonation of 970 days in late filing of the appeal, the petitioner is disentitled to be heard on merits. Apart from the decision in ***Pundlik Jalam Patil's case (Supra)***, reference in context thereto is made to the decision of the Hon'ble Supreme Court in ***Dalip Singh vs. State of Uttar Pradesh 2010 (2) SCC 114***. Relevant extract of the same is reproduced as under :

“For many centuries Indian society cherished two basic values of life i.e. 'satya' (truth) and 'ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the Pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In

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order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final”

[16]. In the light of the position as noted above, the petitioner has not been able to make out any case whatsoever warranting interference with the well reasoned judgment passed by the learned first Appellate Court. Accordingly, finding the revision petition bereft of merit, the same is dismissed. No order as to costs.

(B.S. WALIA)
JUDGE

December 1, 2017
rajesh. k. khurana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No