

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

**CR No.7854 of 2012(O&M)
Date of Decision: 27.09.2017**

Manjit Singh

...Petitioner

Versus

Gurdaspur Amritsar Kshetriya Gramin Bank and another

... Respondents

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

Present:Petitioner in person.

Mr. R.S. Bhatia, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 14.09.2012 passed by Additional District Judge, Gurdaspur vide which application for condonation of delay in filing the appeal was dismissed.

[2]. From the pleadings on record, it can be noticed that Civil Revision No.4468 of 1999 was filed by the petitioner in the High Court against the order dated 16.02.1999 and for a direction to the trial Court to decide the case on merits.

[3]. Plaintiff filed a suit against the defendant for declaration to the effect that order dated 08.03.1989 passed by the Chairman and appellate order dated 19.06.1989 passed by the

Board of Directors, dismissing the plaintiff from service were illegal, against the principles of natural justice and not binding upon him. Plaintiff claimed all the services benefits attached to the service including arrears of pay, increments with interest @ 18% per annum. The suit was filed in Civil Court at Batala.

[4]. Defendants filed written statement and raised the plea that the Court at Batala has no jurisdiction to entertain the suit.

[5]. Trial Court framed a preliminary issue with regard to jurisdiction of the Court to try the suit. Trial Court vide order dated 10.09.1992 found that though the order of dismissal was conveyed to the plaintiff at Batala, but the head office of the plaintiff was at Gurdaspur, therefore, Civil Court at Gurdaspur was having the jurisdiction to entertain the suit. The plaint was ordered to be returned to the plaintiff for presentation before the competent Court at Gurdaspur on 21.09.1992. The plaint was not presented on 21.09.1992, but the same was presented on 16.11.1992. Thereafter, defendants filed their written statement. Trial Court framed the issues and adjourned the case for the evidence of the plaintiff. On the adjourned date, it was noticed that no application under Section 14 of the Limitation Act was filed by the plaintiff for excluding the period during which the suit remained pending at Batala. The application under Section 14 of the Limitation Act was filed to which a contest was made by

the defendants. Trial Court framed necessary issues in respect of sufficiency of grounds for condonation of delay as prayed in the said application. Trial Court did not agree with the contention of the plaintiff with regard to delay and dismissed the prayer of the plaintiff.

[6]. Civil Revision No.4468 of 1999 filed by the plaintiff was ultimately allowed by the High Court by appreciating the circumstances under which the plaint was returned and presented before the proper Court without there being any objection at the relevant time. It was held that the defendants could not be permitted to complain that any prejudice was caused to them. Civil Revision was allowed by setting aside the order of the trial Court. The case was remanded to the trial Court with a direction to decide the suit afresh in accordance with law. Parties were directed to appear before the trial Court on 03.09.2001.

[7]. Petitioner in person submitted that the order dated 05.07.2001 was never brought to his notice by his counsel, nor he appeared before the trial Court on any of the date mentioned in the order dated 23.11.2009. After the order dated 05.07.2001 passed by the High Court, trial Court ultimately dismissed the suit in default under Order 9 Rule 8 CPC vide order dated 15.01.2002. Petitioner further submitted that the said order was

also not in his knowledge and on enquiring knowledge, he filed an application for restoration of the suit on 13.08.2005 and the said application was dismissed on 23.11.2009. Against the order dated 23.11.2009, Civil Revision No.575 of 2010 was filed. High Court vide order dated 08.09.2010 allowed the petitioner to withdraw the revision petition with a liberty to file an appeal before the Lower Appellate Court. Appeal was filed on 21.10.2010 along with application under Section 5 of the Limitation Act. The application for condonation of delay has been declined vide impugned order dated 14.09.2012 passed by Additional District Judge, Gurdaspur by noticing the fact that the petitioner himself is a law graduate and even if the period of filing of petition in the wrong Forum is excluded, the appeal should have been filed upto 08.10.2010. Filing of appeal on 21.10.2010 was held to be time barred. Application under Section 5 of the Limitation Act was dismissed.

[8]. I have considered the submissions made by the parties.

[9]. Evidently, the petitioner specifically argued that after the order dated 05.07.2001 passed by the High Court directing the parties to appear before the trial Court on 03.09.2001, he never appeared before the trial Court and presence of the counsel appeared before the trial Court was without any authority given to him. On 03.09.2001, learned counsel for the

petitioner appeared before the trial Court and the case was adjourned to 29.09.2001 for plaintiff evidence. Since no plaintiff witness was present on 29.09.2001, the case was adjourned to 27.11.2001. Thereafter on 18.12.2001, again no plaintiff evidence was present and the case was further adjourned to 15.01.2002 for the same purpose. Ultimately, on 15.01.2002, the case was dismissed in default for want of prosecution. For more than three years, no effort was made by the plaintiff to get the suit restored. It was only on 13.08.2005, the application was filed for restoration of the suit. The application was ultimately dismissed on 23.11.2009. The exact date of filing CR No.575 of 2010 has not come forth, but it is apparent on record that on 08.09.2010, High Court allowed the petitioner to withdraw the revision petition with a liberty to file an appeal before the Lower Appellate Court. Apparently, no delay was condoned. Only liberty was given to the petitioner to file an appeal before the Lower Appellate Court. Under Article 122 of the Limitation Act, delay has to be computed from the date of passing of the order and not from the date of knowledge, but the Lower Appellate Court has not adverted to the exact time vide which the appeal was barred by limitation. The appeal was filed on 21.10.2010. Plainly, if Limitation for filing the appeal is to be computed from 08.09.2010, the filing of appeal was barred by 12 days, but the

delay has to be computed from the original cause of action viz-a-viz the remedy of appeal against the impugned order.

[10]. Petitioner has also relied upon order dated 28.02.2008 wherein it was recorded that both the parties have concluded their evidence on merits, whereas the evidence was to be led for restoration of the suit only. The recital to the effect that both the parties have concluded their evidence on merits is sought to be relied by the petitioner that in view of aforesaid order, the issue of limitation had become redundant.

[11]. Since the Lower Appellate Court has not given any finding in respect of computation of total period vide which the appeal was barred by limitation, therefore, I deem it appropriate to direct the Lower Appellate Court to revisit the order in the light of interlocutory orders passed on 03.09.2001, 29.09.2001, 27.11.2001, 18.12.2001 and order dated 15.01.2002 passed by the trial Court, dismissing the suit in default and filing of application for restoration on 13.08.2005 and dismissal thereof on 23.11.2009 and thereafter passing of order dated 08.09.2010 in CR No.575 of 2010 by the High Court allowing the petitioner to file an appeal without condoning any delay. In any case, total period has to be computed by the Lower Appellate Court in the context of assessing sufficiency of cause for condonation of delay.

[12]. In view of above, the present case is remanded to the Lower Appellate Court for fresh decision in accordance with law. Both the parties are directed to appear before the Lower Appellate Court on 25.10.2017.

27.09.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No