

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

**Civil Revision No.8193 of 2015 (O&M)
Date of Decision: 28.07.2017**

Ravinder Kaur

.....Petitioner

Vs

Mam Chand and others

....Respondents

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

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate
for the petitioner.

Mr. Ashish Chopra, Advocate and
Mr. Prateek Sodhi, Advocate
for respondent Nos.1 and 2.

Mr. Vikas Bahl, Senior Advocate with
Mr. Sumit Jain, Advocate
Mr. Akshay Rawal, Advocate and
Mr. R.S. Rai, Senior Advocate with
Mr. Sanjeev Sachdeva, Advocate
Mr. Anish Jain, Advocate and
Mr. Kunal Dawar, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 08.09.2015 passed by District Judge, Gurgaon vide which application under Section 5 of the Limitation Act (hereinafter to be referred as 'the Act') filed by the petitioner along with the appeal against

judgment and decree dated 10.11.2009 passed by Civil Judge (Sr. Divn.) Gurgaon was dismissed.

[2]. Brief facts are that a civil suit No.85 dated 19.03.2007 was filed by the petitioner for possession by way of specific performance on the basis of agreement to sell in respect of land in *Khewat/Khatoni* No.55/50-99 Rectangle No.20, *Killa* Nos. 2 (8-0), 3(8-0), 4(4-1), 6(7-6), 7/1(4-13), 8/1(4-0), 9/1(4-0) Rectangle No.9, *Killa* No.13 (7-16), 17/2(1-5) 18(7-8), 22(2-7) 23(7-19) 24/1 (5-7) in which defendant Nos.1 and 2 were co-sharers.

[3]. Defendants after appearance filed the written statement and contested the suit on numerous grounds.

[4]. In the application under Order 39 Rules 1 and 2 CPC, the trial Court noticed the fact that the original of the agreement to sell was placed on record by the plaintiff herself. On the other hand, photocopy of the same agreement to sell bearing signatures of the parties viz-a-viz. witnesses was also appearing on record. The comparison of the original agreement to sell with the photocopy showed that there were alterations/additions in the agreement to sell. The recital of “*Mu.9. Ki 13, Ki.17/2, Ki.18, Ki.22 Ki.23 and Ki.24/1 Kul 13*” was available in the original agreement to sell and the same does not find mention in the

photocopy. The another feature also came to be noticed that the difference between the two documents is that on page No.3 of the photocopy of the agreement to sell, there was no signature of 'Ravi Rai', but the original agreement to sell bears the signature of 'Ravi Rai' on page No.3. The comparison of two receipts regarding payment also showed that in the receipt produced by the plaintiff, there was addition to the effect "*rep. For Blossom Estate, GGN*".

[5]. The trial Court proceeded to examine the original agreement to sell and the receipts of its own and found that there was an addition in the agreement to sell viz-a-viz. in the receipts the ink used on both the occasions was also different. The trial Court also opined that the explanation given by the plaintiff for such a change was not convincing once the original receipt was executed by Alok Dixit in his individual capacity, then there was no occasion to make addition in the receipt that Alok Dixit was acting as representing of Blossom Estate Gurgaon.

[6]. The trial Court further observed that such an addition in the receipt was nothing but a devise to meet out the situation wherein the vendee Alok Dixit would be able to explain. The non-availability of funds required for execution of sale deed. The preponderance of probability was answered in favour of

defendant Nos.1 and 2 and the tampering in the agreement to sell dated 08.10.2006 and receipt were opined to be the result of ill-intention and it was held that the person who has not approached the Court with clean hands was not entitled to the discretionary relief of *ad interim injunction*. After discussing the circumstances appearing on the record, the trial Court proceeded to dismiss the application under Order 39 Rules 1 and 2 CPC vide order dated 11.06.2007. The said order was never assailed by the petitioner in any Forum.

[7]. In the civil suit the issues were framed on 06.09.2007. The plaintiff was afforded several opportunities to lead evidence, but despite availing number of opportunities including last opportunity, the plaintiff did not produce any evidence and as a result of that the evidence of the plaintiff was closed by order of the Court. The defendants did not opt to lead any evidence in the absence of any evidence on the part of the plaintiff. The trial Court in the absence of any evidence produced by the plaintiff, dismissed the suit of the plaintiff vide judgment and decree dated 10.11.2009.

[8]. The plaintiff instead of filing any appeal against the aforesaid judgment and decree dated 10.11.2009 passed by the trial Court, filed an application under Order 9 Rule 13 read with Section 151 CPC on 17.04.2010. The said application was

accompanied by affidavit of the plaintiff. The defendant Nos.1 and 2 filed reply to the application and submitted that the application was not maintainable. The judgment and decree dated 10.11.2009 has attained finality. Plea of *res judicata* was taken. The application under Order 9 Rule 13 CPC was dismissed on 07.03.2013.

[9]. Plaintiff filed CR No.2707 of 2014 titled '*Mrs. Ravinder @ Ravinder Kaur vs. Mam Chand and others*' before this Court along with an application for condonation of delay of 1507 days in filing the revision petition. Plea was taken that the petitioner was pursuing her remedy under Order 9 Rule 13 CPC. The said revision petition was dismissed as withdrawn on 11.04.2017. The order is reproduced here as under:-

“Plaintiff is in revision under Section 115 CPC assailing the judgment and decree dated 10.11.2009 (P4) passed by the learned Civil Judge (Senior Division) Gurgaon whereby her suit for possession by way of specific performance with permanent injunction was dismissed. Alongwith the revision an application bearing No.7071-CII/2014 seeking condonation of delay of 1507 days in filing the revision has also been filed with the averments that the applicant/plaintiff was wrongly pursuing her remedy by filing an application under Order 9 Rule 13 CPC against the aforesaid judgment and decree.

At the time of hearing, realising that the present revision would not be maintainable, learned counsel for the

petitioner craves indulgence of this Court for permission to withdraw the present revision petition in order to avail his remedy in accordance with law.

Ordered accordingly.

11.04.2014
joshi

(**Jaswant Singh**)
Judge"

[10]. Thereafter appeal against the judgment and decree dated 10.11.2009 was filed on 16.01.2015 along with an application under Section 5 of the Act. The same was dismissed vide the impugned order. That is how the present revision has been filed before this Court.

[11]. Learned Senior counsel for the petitioner submitted that since the petitioner was availing wrong remedy under Order 9 Rule 13 CPC in a *bona fide* manner, therefore, the petitioner is entitled to the protection under Section 14 of the Act. Filing of original agreement to sell without addition of land from *Rectangle No.9 Killa No.13* onwards was filed in the revision petition. Learned Senior counsel further contended that the filing of said agreement to sell was an inadvertent error as the validity of both the agreement to sell would be gone into in appeal, if condonation of delay is done in the present revision.

[12]. Learned Senior counsel by referring to **Ghasi Ram and others vs. Chait Ram Saini and others, (1998) 6 SCC 200;**
Lalitaben Ishwarlal Naik and others vs. Natvarlal

Thakorbhai Desai, 2011(3) GLR 2750 (Gujarat); Shakti Tubes Limited through Director vs. State of Bihar and others, (2009) 1 SCC 786; Trai Foods Limited vs. National Insurance Company and others, (2004)13 SCC 656; State (NCT of Delhi) vs. Ahmed Jaan, 2008(4) RCR (Civil) 126; Collector Land Acquisition, Anantnag and another vs. Mst. Katiji and others, 1987 AIR (SC) 1353 and Harbans Singh vs. Punjab National Bank and ors., 2002(4) RCR (Civil) 380 contended that a liberal approach in respect of condonation of delay has to be adopted as the technicality should not come in the way of imparting cause of justice. Meritorious matter should not be pitted against mere technicalities and cause of justice should prevail. By filing the appeal at a belated stage, the party concerned does not gain anything, rather suffers and runs a risk and in such eventuality the opposite party can best be compensated with adequate cost.

[13]. On the other hand, Mr. R.S. Rai, learned Senior counsel for respondent No.3 vehemently opposed the prayer on the ground that the non-maintainability of an application under Order 9 Rule 13 CPC was very much disclosed in the reply filed to said application and the appeal is delayed by more than 5 years. The plaintiff himself filed correct agreement to sell in the revision petition before this Court. Plaintiff had approached

the Court on the basis of forged agreement to sell dated 08.10.2006. On comparison, the trial Court itself found that there was an alteration/addition in the original agreement to sell. Recital “*Mu.9. Ki 13, Ki.17/2, Ki.18, Ki.22 Ki.23 and Ki.24/1 Kul 13*” was not mentioned in the photocopy of the agreement which was also admitted by the plaintiff to be genuine when she relied upon the same as the correct agreement to sell in the revision petition. The application under Order 39 Rules 1 and 2 CPC was dismissed on 11.06.2007 and the said order was never assailed by the plaintiff till dismissal of the suit after more than two years thereafter on 10.11.2009. After seeing the observations recorded by the trial Court in order dated 11.06.2007, the plaintiff did not come forward to challenge the same, rather preferred to keep quiet and thereafter led no evidence in the main suit which was also dismissed on 10.11.2009. Thereafter instead of filing appeal against the said judgment and decree, she venture to file application under Order 9 Rule 13 CPC which was not maintainable as the suit was not decided *ex parte* against her. In reply filed to the application under Order 9 Rule 13 CPC specific stand was taken by the defendants that the application was not maintainable.

[14]. Mr. Vikas Bahl, learned Senior counsel for respondent

No.3 submitted that the original agreement to sell was not having the recital of Rectangle No.9, *Killa* No.13, *Killa* No.17/2, *Killa* No.18, *killa* No.22, *Killa* No.23, *Killa* No.24/1 and *Kul* 13. The said incorporation was made by way of tampering in the original agreement to sell and on the basis of said tampered agreement to sell, the suit was filed. Defendant Nos.1 and 2 executed sale deed on 04.12.2006 in favour of defendant No.3 in respect of *khasra* numbers which were not incorporated in the agreement to sell executed between the said parties. After execution of sale deed on 04.12.2006, defendant No.3 developed the land after obtaining necessary CLU from the competent authority. Completion certificate was also obtained by defendant No.3 in respect of construction raised at the spot. Thereafter, the suit in question came to be filed on 19.03.2007 on the basis of forged agreement to sell in which the *khasra* numbers of sale deed executed in favour of defendant No.3 were mentioned.

[15]. Learned Senior counsel pointed out that the petitioner did not lead any evidence in the main suit and the dismissal of the suit was more or less under Order 17 Rule 3 CPC. In the appeal filed along with the application under Section 5 of the Act, no material was sought to be produced by way of any additional evidence. The alleged legal advice resulting in delay

cannot be appreciated in the light of affidavit filed by the plaintiff/petitioner on 17.04.2010 in which there was no general power of attorney shown and the petitioner herself signed the affidavit, therefore, from that day onwards no such plea of even general power of attorney being liable for the delay can be advanced by the plaintiff. Plaintiff could not have blamed the general power of attorney for the delay in question once a specific reply was filed to the application under Order 9 Rule 13 CPC. After dismissal of the application under Order 9 Rule 13 CPC on 07.03.2013, the plaintiff did not take any action for more than one year and one month and CR No.2707 of 2014 came to be filed only on 04.04.2014. No explanation was given by the plaintiff when she herself was pursuing the litigation as per affidavit dated 07.04.2010.

[16]. In support of his contention, learned Senior counsel relied upon **Ramji Pandey and others vs. Swaran Kali, 2011 AIR (SC) 489; Punjab State vs. M/s Tara Singh & Co. Govt. Contractor, 1996(2) RRR 116 (P&H); Ram Singh and others vs. Jaswant Kaur and another, 2010(2) PLR 234; Office of the Chief Post Master General and ors. vs. Living Media India Ltd. and Anr., 2012(2) SCT 269; Hari Kishan vs. Gian Kaur, 1996(2) PLR 360 (P&H) and Haro Singh vs. Ajay Kumar Chawla and other, 2004(2) AD (Delhi) 117** and

contended that in view of facts and circumstances of the case, the delay cannot be condoned.

[17]. I have heard learned counsel for the parties.

[18]. From the record, I find that the application under Order 39 Rules 1 and 2 was decided by the trial Court on 11.06.2007 in which material observations were made in respect of incorporation of land which was the subject matter of sale deed dated 04.12.2006 in favour of defendant No.3 and the same was not the subject matter of original agreement to sell, photocopy of which has been admitted by the plaintiff/petitioner in the revision petition as well as before this Court during course of arguments. However, learned Senior counsel for the petitioner stated that annexing of the aforesaid photocopy of the agreement to sell with the revision petition was an inadvertent act on the part of the plaintiff/petitioner at that time and still the validity of the agreement to sell viz-a-viz. the photocopy of the agreement to sell can be gone into by the Court at the relevant stage. The application under Order 9 Rule 13 CPC was objected to by the defendants by way of reply at the relevant stage, still plaintiff/petitioner proceeded with the said application and the same was ultimately dismissed on 07.03.2013 after consuming about three years. Revision petition No.2707 of 2014 was filed before this Court on 04.04.2014 even with a further delay of one

year one month. In that petition, the order impugned was the same judgment and decree dated 10.11.2009. The said revision petition was withdrawn on 11.04.2014 in order to avail any other remedy. Thereafter the appeal was filed on 16.01.2015 after further delay of 9 months along with application under Section 5 of the Limitation Act.

[19]. In view of aforesaid, the plea of pursuing the remedies before wrong Forum, in my considered opinion cannot be entertained. It is true that the Court should be liberal in condoning the delay, if the same is not inadvertent and has been caused on account of *bona fide* conduct of the party in pursuing the litigation under wrong Forum. In view of material observations made by the trial Court in order dated 11.06.2007 in respect of forgery in the agreement to sell as well as in the receipt, I am of the view that the party, who has not come to the Court with clean hands does not deserve any equitable relief much less condonation of delay of more than 5 years in filing the appeal.

[20]. In view of settled position of law in **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416, A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431** and

Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar
through Shri Raghunath Sahi, 2003(2) RCR (Rent) 148, a party who played fraud has no equities in law and can be thrown at any stage of litigation.

[21]. In view of aforesaid totality of facts and circumstances, I am of the view that the petitioner does not deserve any indulgence at the hands of this Court for condonation of delay of more than 5 years in filing the appeal before the lower Appellate Court. This revision petition is accordingly dismissed.

July 28, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No