

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

CR No.8220 of 2017
Date of decision : 28.11.2017

Dharam Singh

...Petitioner

Versus

Ram Asra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravi Chadda, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The defendant-petitioner is in revision petition against the order passed by the learned First Appellate Court dismissing the application for condoning the delay in filing the appeal against the final decree.

This case has a chequered history. A suit for partition was filed on 24.04.2000. The petitioner who was defendant in the suit, contested the suit and the Court passed a preliminary decree on 22.11.2007. No appeal was filed against the preliminary decree. The plaintiffs filed an application for passing a final decree in the year 2008. Notices were sent to the petitioner. The petitioner refused to accept the notices. The learned Court passed a final decree on 19.07.2013. The petitioner filed an appeal before the learned First Appellate Court after a delay of approximately 18 months i.e. on 03.03.2015. Learned First Appellate Court after considering all aspects of the matter, dismissed the application for condonation of delay. The

petitioner pleaded that he came to know about the final decree in the first week of February, 2015, when he visited the Court and came to know of the decree passed.

Learned Court noticed that the petitioner was already in the knowledge of pendency of the litigation. He had appeared in the Court when the suit was filed and the preliminary decree was passed on 22.11.2007. Even fresh notices were issued to the petitioner for their service when application for preparation of the final decree was moved. The petitioner refused to receive the summons. The Process Server even carried out proclamation in the area. The report of the refusal was witnessed by Kalyan Chand, Member Panchayat.

Learned First Appellate Court while considering the application for condonation of delay framed the issues and granted opportunity to the parties to lead evidence. The petitioner, Dharam Singh appeared in the witness-box.

On the other hand, respondents examined Amarjit Singh, Process Server, Raj Kumar, another Process Server, Kalyan Chand, Member Panchayat and Puran Chand, Chowkidar of the village.

After considering the evidence available on the file, the Court recorded a finding that the plea taken by the petitioner seeking condonation of delay is without any basis.

I have heard the learned counsel for the petitioner at length and with his able assistance gone through the documents filed in the paper book.

Learned counsel for the petitioner has submitted that the witness namely Kalyan Chand had admitted that his signatures were taken

by the Process Server in his shop and, therefore, the report of the refusal is not proved.

I have considered the submission. It has been recorded by the learned First Appellate Court that the respondents had examined Amarjit Singh, the Process Server as a witness who had deposed before the Court that he tried to serve the summons on Dharam Singh, Pritam Singh, (appellants before the First Appellate Court) and they refused to receive the summons. Thereafter he took witness Kalyan Chand alongwith him but still they refused to receive the summons. Thereafter, he took signatures of Kalyan Chand in token of refusal of the summons at his shop. Still further, the Court did not proceed ex parte and ordered proclamation. Raj Kumar, Process Server had been examined who had carried out the proclamation with the help of the Chowkidar of the village.

Taking into consideration these facts, this Court does not find any good ground to interfere with the order passed by the learned First Appellate Court.

Revision petition is dismissed.

28.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No