

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 28240 of 2013

Date of decision : July 18, 2017

Dalip Singh

..... **Petitioner**

Versus

State of Haryana and others

..... **Respondents**

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Mr. Avnish Mittal, Advocate
for the petitioner.

Ms. Tanisha Peshawaria, DAG., Haryana.

Mr. P. S. Bhangu, Advocate
for respondent Nos. 5 to 7.

RAKESH KUMAR JAIN, J (oral).

This petition is filed in order to challenge the order dated 8.8.2013 passed by the Financial Commissioner, Haryana by which the revision petition filed by the petitioner along with an application for condonation of delay of 915 days filed under Section 5 of the Limitation Act, 1963 (hereinafter called as 'the Act') has been dismissed.

In brief, the respondent Nos. 5 to 7 filed a petition under Section 111 of the Punjab Land Revenue Act, 1887 (hereinafter called as 'the 1887 Act') for partition of joint khewat. Although mode of partition was prepared by A.C. IInd Grade on the basis of which Naksha-Bey was prepared but the petitioner did not challenge the same. However, the case of the petitioner is that he was not served in the partition proceedings, therefore, he was not aware of it and challenged Naksha-Bey by way of an appeal before the Collector after a delay of about 300 days. The petitioner

allegedly a co-sharer. The Collector dismissed the appeal on 16.2.2010. This led to the filing of two revisions; one by the petitioner and other by late Jagni Devi. The Commissioner dismissed both the revisions by a common order dated 28.9.2010. Jagni Devi, had though, approached the Financial Commissioner by way of revision filed under Section 16 of the Act of 1887 but the petitioner preferred to challenge the partition proceedings by way of civil suit in which his main grievance was about the service was not affected upon him. The civil suit as well as the appeal filed by the petitioner were dismissed and the civil court recorded a categorical finding that the petitioner was served.

Be that as it may, the suit was however, dismissed on the ground that civil court had no jurisdiction to decide the *lis* between the parties. The petitioner, after about 3 years i.e. after 915 days decided to file the revision against the order of the Commissioner dated 28.9.2010 along with an application under Section 5 of the Act for condonation of delay. The said application has been dismissed by the impugned order and hence the present petition is filed.

Learned counsel for the petitioner has submitted that the petitioner did not challenge the order of the Commissioner because he was not aware that it has been challenged by other co-sharer i.e. late Jagni Devi who was impleaded as a party before the Collector and she had also suffered in the manner as the petitioner had by the order dated 16.2.2010 and also by the order dated 28.9.2010 passed by the Collector and Commissioner respectively. It is also submitted that the petitioner was pursuing his remedy of assailing the validity of the partition proceedings before the civil court therefore, he did not file the revision petition.

On the other hand, learned counsel for the respondents has submitted that in order to seek condonation of delay, much less invoking the provisions of Section 5 of the Act, the petitioner had to make out a case of sufficient cause and that the cause shown by the petitioner in the application that revision petition has been filed because the other co-sharer Jagni Devi had challenged the order of the Commissioner dated 28.9.2010 is not a “sufficient cause” and in this regard he has relied upon the decision rendered by the Hon'ble Supreme Court in **Brijesh Kumar and others Vs. State of Haryana and others 2014 (3) RCR (Civil) 372.** He has also submitted that the petitioner has always been filing the petitions after delay, as before the Collector he was late by almost three years and before the Financial Commissioner also of the same period.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Section 5 of the Limitation Act, 1963 deals with extension of prescribed period in certain cases. It provides that “any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.” The word sufficient cause is sine quo non which has to be established by the party who is seeking to enter the court after the expiry of prescribed period.

In this case, the sufficient cause alleged by the petitioner is that the other co-sharer had already filed a revision before the Financial Commissioner but it was not within his knowledge and as soon as he came

to know he also preferred the revision but by that time the delay of 915 days had already taken place. The question is thus, as to whether the reason given by the petitioner is to be constituted as “sufficient cause” for the purpose of invoking the provisions of Section 5 of the Act. In this regard, decision in the case of **Brijesh Kumar and others (supra)**, relied upon by counsel for respondent Nos. 5 to 7 would be against the petitioner because it has been held therein that the delay could not be condoned on the ground that petitioner filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The petitioner in this case has also submitted that late Jagni Devi had filed the revision in which stay was also granted to her and he sought the same order from the said Court which has been declined.

To my mind, the reason given by the petitioner cannot be constituted as a “sufficient cause” for the purpose of delay, much less in the face of the decision rendered by the Hon'ble Supreme Court in the case of **Brijesh Kumar and others(supra)**. Even otherwise, as stated by the counsel for the respondents the entire partition proceedings are over and Sanad Taksim has been issued and the entries have also been made in the revenue record. Thus, in this view of the matter, I do not find any merit in the writ petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

July 18, 2017
archana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No