

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

ESA No. 224 of 2016 (O&M)

Date of decision:- January 16, 2017

LAKHWINDER KAUR

....APPELLANT..

VS.

SARWAN SINGH

....RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Ashok Sharma Nabhewala, Advocate,
for the appellant.

JASPAL SINGH, J.

The instant appeal arises out of the order passed by first appellant court (Additional District Judge, Kapurthala) on 26.07.2016 whereby execution first appeal has been dismissed as time barred.

2. The facts giving rise to the instant appeal are that Naranjan Singh is alleged to have executed an agreement of sale dated 07.10.2003 with respondent-Sarwan Singh in respect of agricultural land measuring 28 kanals 10 marlas. When the sale deed was not executed, respondent Sarwan Singh approached the civil court by way of suit for specific performance which was decreed vide judgement and decree dated 23.05.2009 by Id., Additional Civil Judge, Senior Division, Sultanpur Lodhi, District Kapurthala. The respondent-decree holder filed execution application in the Court of Additional Civil Judge during the pendency of which, the petitioner filed objection petition on 04.08.2011 but that objection petition

was dismissed by the Court concerned vide order dated 16.04.2012, that too, without framing issues.

3. Against the dismissal of the objection petition vide order dated 16.04.2012, the appellant filed an appeal before the Additional District Judge, Kapurthala on 07.09.2012 along with which an application under Section 5 of the Limitation Act for condonation of delay beyond the period of 30 days prescribed under law was moved but the application for condonation of delay was dismissed on 26.07.2016 as having been time barred, which has necessitated the filing of the instant appeal.

4. The contention of learned counsel for the petitioner is that there is delay of 3 months and 24 days in filing the appeal against the order dated 16.04.2012. Though, the delay has been duly explained but the first appellate court dismissed the same without taking into consideration the fact that the law of limitation is a hand made and the rights of the parties should not be scuttled down merely on the ground of delay. In fact, the delay in filing the appeal before first appellate court has occurred due to the reason that the applicant-appellant remained under impression that the matter has been fixed for pronouncement of order and she has been attending the proceedings. Moreover, for some time, the case file also remained missing and when the file was traced out, the applicant-appellant came to know on 03.12.2012 that the above said order dated 16.04.2012 has been passed. Immediately, thereafter the applicant-appellant filed an appeal before the appellate court. Moreover, the applicant-appellant is not going to be benefitted by filing an appeal with delay. Thus, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

5. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but find the same to be of without any factual and legal substance, especially, in view of the fact that the judgment and decree dated 23.05.2009 passed in civil suit preferred by the respondent-plaintiff has attained finality as Naranjan Singh did not opt to file any appeal against the said judgment. Moreover, no reason what to talk of any plausible reason has been furnished by applicant-appellant for the inordinate delay of 3 months and 24 days. No doubt, the Rules of limitation are not meant to destroy rights of parties. Rather, they are meant with the objective that parties should not resort to dilatory tactics and sleep over their rights. They must seek remedy promptly. The objective of providing a legal remedy is to repair the damage caused by reason of legal injury. Thus, the law of limitation may harshly affect the parties but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds.

6. Hence, the appeal is dismissed.

January 16, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes