

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

**CM No. 14570-CII of 2015 in/and
FAO No. 4630 of 2015 (O&M)
Date of Decision: 01.09.2017**

Tarlochan Singh

..... Appellant

Versus

Piara Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Kanwal Goyal, Advocate
for the appellant.

None for respondent Nos. 1 to 3.

Service of respondent Nos. 4 & 5 is
dispensed with vide order dated 24.02.2016.

JASWANT SINGH, J. (ORAL)

Appellant (petitioner before the ADJ, Chandigarh), has filed the present appeal against the Order dated 10.07.2013 passed by Additional District Judge, Chandigarh, whereby his petition under Section 276 of Indian Succession Act, 1925 for grant of probate in respect of alleged Holographic Will/s executed by Amrik Singh (father of the parties to the *lis*), has been dismissed.

CM No. 14570-CII of 2015 is an application filed by the applicant/appellant for condonation of delay of 550 days in filing the present appeal.

Notice of the said application was issued and in pursuant thereto, respondents no 1 to 3 appeared through their counsel and have filed reply, opposing the application for condonation of delay.

As per learned counsel for the applicant/appellant, the delay in filing the appeal has been caused due to the fact that the applicant had previously engaged Sh. HPS Kochhar, Adv. to pursue the appeal before this Court. Sh. HPS Kochhar was also applicant's lawyer before the trial court. However, Shri Kochhar, instead of filing First Appeal against Order (FAO) dated 10.07.2013, filed a Regular First Appeal (RFA) vide diary No. 108725 on 06.11.2013 (i.e within limitation). However, the registry, apart from other objections, also raised an objection qua maintainability of RFA before this Court. Instead of removing the objection qua maintainability, the counsel re-filed the appeal, with a delay in re-filing, again as an RFA. Ultimately, again an objection was raised by registry qua maintainability of appeal, which was never removed and instead the appeal was filed again as RFA, which was again returned with same objection.

It is contended by the learned counsel for the applicant that thereafter, the appeal was never re-filed and the previous counsel kept him in dark about the said objections. Ultimately, being unsatisfied with the working of the counsel and non-listing of his appeal, the applicant took his brief back and engaged the present counsel. However, in view of the fact that the certified copy was never returned by the previous counsel, the applicant re-applied the certified copy of the order and has thereafter filed the present appeal immediately without further delay. In support of his contention, the counsel has relied upon the documents Annexure A-10 (colly), which is the original of the objections raised by the registry from time to time.

On the strength of the aforesaid facts, it has been argued that

there is no fault on part of the applicant, being a layman, and believing in the words of his counsel, he bonafidely acted on the advice of his counsel. However, by not filing the appeal, the appellant would stand to gain nothing and therefore, it is a fit case to allow the application and condone the delay of 550 days in filing the present appeal.

On the other hand, a perusal of the reply filed by the contesting respondents no 1 to 3 would reveal that the application has been opposed mainly on the ground that the applicant has not come to the court with clean hands and the delay has not been satisfactorily explained, because it is not believable that the applicant would sleep over his rights for such a long time.

I have heard learned counsel for the applicant and perused the record carefully, with his able assistance and am of the view that the present application is without any merits and same deserves to be dismissed.

A perusal of the record would show that at the time of preliminary hearing, the co-ordinate bench had directed the applicant, vide its order dated 05.02.2016, to place on record the remaining pages of Regular First Appeal, allegedly filed by the previous counsel. The said pages alongwith other documents, including the printout of the objections raised by the registry, as available on the internet were placed on record as Annexure A-11 to A-13. Thereafter, vide order dated 27.05.2016, the co-ordinate bench had further directed the applicant to file his affidavit, as to why he did not take any action against his previous counsel. In compliance of the said order, the applicant filed his affidavit dated 31.05.2016, vide CM No. 12122-CII of 2016, as per which, he has averred that since he is doing

“Lathe work” and has limited source of income, therefore, he is not in a position to take action against his lawyer and consequently, initiate another litigation.

However, this court is of the opinion that the said explanation given by the applicant, in his application for condonation of delay and subsequent affidavit is not sufficient to condone the inordinate delay of 550 days in filing the appeal. A litigant is expected to be vigilant of his rights, especially when he is residing in Chandigarh itself. It is not at all expected from the litigant to sleep over his rights for more than 1 ½ year and then get up and file the appeal by alleging that his previous counsel did not pursue the appeal properly. No doubt, it is the duty of the counsel to pursue the appeal and file the same under correct provisions of law, however, it does not mean that the litigant is absolved of his duty to take care of his own case. The litigant cannot be permitted to take shelter of the fact that his counsel was not giving him correct information. It is infact, duty of the litigant to know all the details of his case, especially when, it is not his case that he is illiterate or that he is indisposed due to any difficulty. The ground of being misled by the counsel, can be termed, at best, to be a lame excuse. The applicant, in the present case, has not been diligent enough about his rights and has let much water flow through. Merely because, he would not get anything by not filing the appeal, cannot be held to sufficient ground.

As per Section 5 of Limitation Act, the court has been granted the power to condone the delay, when “sufficient cause” has been shown to the court by the litigant. However, “sufficient cause”, cannot include completely ignoring his own case and believing the word of the counsel,

without there being sufficient proof. In the present case, the appellant is a resident of Chandigarh and could have easily pursued the appeal with his counsel, if he actually had any intent to pursue the same. Thus, complete inaction on part of applicant for more than one and half year, is sufficient to decline the application filed by applicant for condonation of delay, which is accordingly dismissed.

Another aspect that weighed heavily in the mind of this court was that the Counsel was also heard on merits and on perusal of the record, it is found that there is nothing substantial in the appeal as well. This fact also played a crucial role, while dismissing the application for condonation of delay, so that substantial rights of a litigant are not thrown out on technicalities.

FAO No. 4630 of 2015

A perusal of the judgment passed by the Court below would reveal that the appellant has been non-suited on the ground that the alleged holographic wills of Amrik Singh (father of the parties to the lis) has not been proved on record. I agree with the said findings returned by the Court below, in view of Section 63 of the Indian Succession Act, 1925, as per which an un-privileged will is required to be attested by two attesting witnesses. Admittedly, the will/s in question are unprivileged ones. The Will/s propounded by the appellant is un-attested and thus, cannot be termed as 'will' at all. The alleged admission of respondents no 1 to 3 in their written statement, as relied upon by learned counsel for the appellant, cannot come to his aid, because in the absence of attestation of Will by attesting witnesses, it cannot be termed to be a 'Will' and can at the most be

termed to be a statement made by Amrik Singh on the state of affairs of the family.

Since, there is no Will in existence and at the most, they are statement of affairs stated by deceased Amrik Singh, in his own handwriting, the Court has no jurisdiction to adjudicate the validity or otherwise of the documents (which are alleged to be Will/s), as the court, while exercising powers under Section 276 of Indian Succession Act, 1925, can only adjudicate upon the validity of a ‘Will’ and not a mere document.

In view of the above, finding no merit, the present appeal is also dismissed.

September 01, 2017

'dk kamra'

**(JASWANT SINGH)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No