

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

1. **RSA No.784 of 2013 (O & M)**
Date of Decision:-03.05.2017

Mahinder Singh

...Appellant

Versus

State of Haryana and others

...Respondents

2. **RSA No.797 of 2013 (O & M)**

Mohinder Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Parminder Singh, Advocate
for the appellant(s).

Mr. Paramjeet Singh, AAG, Haryana.

HARI PAL VERMA J.(Oral)

Since both these appeals i.e. **RSA No.784 of 2013** and **RSA No.797 of 2013** are inter connected, the same are being taken up together and this common order shall dispose of both the aforesaid appeals. However, for the sake of brevity, the facts are being taken up from RSA

No.784 of 2013.

The appellant-plaintiff (hereinafter called 'the plaintiff') has filed the present regular second appeal against the judgment and decree dated 10.10.2012 passed by learned Additional District Judge, Karnal whereby his appeal against the judgment and decree dated 2.2.2011 passed by learned Civil Judge (Junior Division), Karnal was dismissed.

Briefly stated, the plaintiff, who has taken the Yamuna Ghat, Dabkauli Kalan on lease for the year 2005-06 for a period of one year for a sum of Rs.2,55,300/- in an open auction held on 17.3.2005 and had deposited Rs.20,000/- as security, filed a suit for mandatory injunction directing the respondents/defendants (hereinafter called 'the defendants') Nos. 2 and 3 to pay a sum of Rs.1,50,000/- along with interest and compensation, as neither the agreement was executed nor the possession of the Ghat was handed over to him. However, said suit was dismissed by the Civil Judge (Junior Division) vide judgment and decree dated 2.2.2011 and the trial Court held that since the plaintiff had never gone before the Department for the execution of the agreement and no evidence was adduced, therefore, it is the plaintiff, who instead of approaching the defendant, has straight away come before the Civil Court for getting Rs.1,50,000/-. The plaintiff has never exhausted the remedies regarding getting possession of the Ghat in question.

Aggrieved against the aforesaid judgment and decree dated 02.2.2011, the plaintiff filed an appeal before the lower Appellate Court, but the same was dismissed on the ground of limitation. The relevant para

of the judgment of learned lower Appellate Court, whereby the appeal of the plaintiff was dismissed, reads as under :-

“8. The present appeal has been filed against the judgment and decree dated 2.2.2011 passed by the Court of Shri Mahesh Kumar, the then learned Civil Judge (Junior Division), Karnal. The appeal was filed on 22.4.2011. The condonation of delay in filing the appeal is sought on the ground that the plaintiff had met the clerk of his counsel who had told him the limitation period for filing the appeal as 90 days. But it is not convincing. Plaintiff having failed in the suit, his first and foremost anxiety would be to get the certified copies of the Judgment and decree against him and file the appeal. He had applied for certified copies of the judgment and decree on 8.2.2011 and the same were ready for delivery on 11.2.2011. The plaintiff obtained the delivery of the copies on 14.2.2011 and filed the appeal on 22.4.2011. This shows the lax attitude on the part of the plaintiff.”

Learned counsel for the appellant has argued that though the suit filed by the appellant-plaintiff was dismissed on 2.2.2011, he applied for the certified copy of the judgment on 8.2.2011, which was prepared on 11.2.2011. He got the certified copy of the judgment on 12.2.2011 and filed appeal on 22.4.2011, though the appeal was required to be filed on or before 14.3.2011. He has argued that the delay in filing the appeal is for the reason that the appellant-plaintiff had met the clerk of the counsel, who told him that the limitation for filing the appeal against the judgment and decree passed by the Court below is 90 days and it is under this bona fide

impression, the appellant could not prefer the appeal within the statutory period of limitation. Though the appeal was filed on 22.4.2011.

On the other hand, learned counsel for the respondents-State has argued that the plaintiff is a contractor, therefore, he is expected to be well aware of the provisions of the Limitation Act. Since he has failed to file the appeal within the stipulated period, the ground seeking condonation of delay is not sufficient as provided under Section 5 of the Limitation Act. Therefore, the present appeal deserves to be dismissed.

I have heard learned counsel for the parties.

There is no dispute that the Civil Court had dismissed the suit on 2.2.2011 and thereafter, the conduct of the appellant-plaintiff shows that he has been consistently making his efforts so as to get the certified copy of the judgment and decree sheet dated 2.2.2011, which he ultimately received on 14.2.2011. Though the appeal was to be filed within 30 days i.e. on or before 14.3.2011 but the same was filed on 22.4.2011. The grounds seeking condonation of delay seem to be justified and sufficient as appellant was not well conversant with the provisions of the Limitation Act and remained under the bona fide impression that the limitation for filing the appeal against the judgment and decree passed by the Civil Court to the lower Appellate Court is 90 days. It is under this bona fide impression he could not prefer the appeal. Moreover it is not the case of the appellant that he preferred appeal after a long delay. As against the due date i.e. 14.3.2011, the appellant had filed the appeal on 22.4.2011. Therefore, this Court finds that the grounds shown by the appellant-plaintiff are sufficient to condone

the delay and the lower Appellate Court should have entertained the appeal after condoning the delay.

Therefore, without expressing any opinion on the merits of the case, the present appeal is allowed and the order dated 10.10.2012 passed by the lower Appellate Court is set aside. The case is remanded back to the lower Appellate Court to decide the same on merits in accordance with law.

The parties are directed to appear before the lower Appellate Court on 20.5.2017.

May 03, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No