

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 24.08.2017****RSA No.199 of 2017 (O&M)**

Gurudwara Damdma Langar Sahib, Raipur Rani, Panchkula

...Appellant

Vs.

Richpal Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Arvinder Arora, Advocate, for the appellant.

RAJIV NARAIN RAINA, J.

Appellant - Gurudwara Damdama Langar Sahib, Raipur Rani, District Panchkula instituted civil suit on 04.08.2011 for a declaration that sale deeds dated 16.07.2007 and 17.07.2007 pertaining to land measuring 3 Kanal 10 Marla falling in the revenue estate of Village Raipur Rani, District Panchkula executed by defendant No.1 – Richpal Singh in favour of defendants No.2 & 3 – Dr. Meenu and Shivani Gupta respectively, and the sale deed dated 15.03.2010 vide which land measuring 1 Kanal 5 Marlas was sold to defendant No.4 – Taniya Singla by defendant No.2, be declared void and not binding upon the legal rights of the Gurudwara and the same were liable to be set aside with the consequential relief of permanent injunction restraining defendants No.3 & 4 from alienating, transferring, mortgaging, encumbering or leasing out the suit property to anyone; with a further injunction restraining defendants No.3 & 4 from taking possession of

the suit property illegally or forcibly from the plaintiff – Gurudwara and raising any sort of construction over the suit property.

Upon notice, defendants put in appearance and pleaded that the suit property was owned and possessed by defendants No.2 to 4. Defendant No.1 Richpal Singh was the President of the Society, which run the Gurudwara and sold the suit land to defendants No.2 & 3, who further sold it to defendant No.4 in the year 2007 with first sale by Richpal Singh as per legal necessity to clear the debts of the Gurudwara. The sale was with the consent of the members of the Society, who passed a resolution No.12 of 2007 nominating Richpal Singh to sell the land to clear the debts on behalf of the Society. Before buying the suit land, defendants No.2 & 3 say they had done due diligence of the revenue record, the constitution of society and the record of Registrar of Societies, which confirms the resolution from the members and that, is how the sale deeds came into existence for valuable consideration as per market value of the suit land.

It was pleaded that defendants No.2 & 3 gave the property on license to Kautilaya Education Society and a building was constructed in 2008 over the suit land. No objection by any person including the plaintiff was raised till the filing of the suit.

In the trial that followed, the plaintiff failed to produce any oral or documentary evidence even though the issues were framed on 21.03.2014. Despite several effective opportunities granted to lead evidence, plaintiff did not lead any. Ultimately, the plaintiff's evidence was closed by order dated 01.08.2014. Upon this turn of events, the defendants pleaded that the suit should be decided forthwith as per the provisions of Order 17 Rule 3 CPC. However, before a decision could be taken on the request, an

application was moved by the plaintiff under Section 151 CPC for review of the order dated 01.08.2014 closing the evidence of the plaintiff. The Civil Judge (Junior Division), Panchkula, while dismissing the application by passing a separate order, dismissed the suit vide judgment and decree dated 23.07.2015. The Civil Judge (Junior Division) dismissed the suit on the ground that the plaintiff has been unsuccessful in producing any evidence in support of its case.

Aggrieved by the judgment and decree dated 23.07.2015, the plaintiff carried an appeal in the Court of learned District Judge, Panchkula praying for setting aside of the judgment and decree as also the interim orders dated 01.08.2014 closing the plaintiff's evidence and the order dated 23.07.2015 dismissing the review application filed by the plaintiff. It may be noticed that the appeal before the first Appellate Court was accompanied by an application for condoning the delay of 116 days in filing the appeal.

The learned District Judge, Panchkula by order dated 22.08.2016 has dismissed the application for condonation of delay and as a result has dismissed the appeal as time barred, leaving the parties to bear their own costs.

In reaching this conclusion, the learned District Judge, Panchkula has noticed that the impugned judgment and decree in first appeal is dated 23.07.2015 and the appeal was filed on 18.12.2015. From the certificate of copying agency, the District Judge noticed that certified copy was delivered on 13.08.2015 pursuant to an application for supply of certified copy moved on 31.07.2015. The delay when calculated as per law of limitation after excluding the period of preparing the copy appeared to be 104 days. The explanation given by the plaintiff-appellant was that the brief

was handed over together with all papers to a High Court lawyer, who tendered wrong advice telling the appellant that they should file a civil revision or civil miscellaneous petition before the High Court. Later on, the said Advocate returned the brief saying that the appeal was required to be filed before the District Judge. These circumstances led to delay in filing the appeal.

It may be noticed that the plaintiff had filed an application under Section 151 CPC for review of the order closing their evidence, which application was dismissed and at the same time the suit was dismissed under Order 17 Rule 3 CPC.

There was, therefore, no question of an appeal before the District Judge. However, Civil Revision could arguably be filed, but the recourse was not taken. In any case, both the orders could be questioned in appeal as District Judge would have power under Section 96 CPC to decide all the issues in case it chose not to dismiss the application under Section 5 of the Limitation Act in which case of declining the application under Section 5 of the Limitation Act the merits were not to be gone into.

To return to the pleadings in the application, which have been noticed and discussed by the District Judge in Paras.21 to 23 of her judgment, the District Judge has assigned the following reasons in support of the dismissal:

- (a) The Advocate was not named nor was his affidavit filed in support of the contents of the application;
- (b) The applicant has not mentioned the dates on which the brief was handed over to the High Court lawyer for filing Civil Revision or Civil Miscellaneous Petition and when about he returned the papers; &

- (c) The applicant is completely silent as to when he approached the alleged lawyer and for how long a time he retained the brief.

Thus, the District Judge came to the conclusion that such vague pleas failed to make out sufficient cause for showing the delay as justified. The District Judge remarked that this shows and suggests that applicant-plaintiff has concocted the facts in the application just to make out the delay. In the absence of any narration of the factual position, delay could not be condoned. It also appeared improbable to the District Judge that the counsel would give wrong advice, if it was given. The law in Section 5 of the Limitation Act is settled that each day's delay is required to be explained cogently and sufficiently, which is lacking in the present case. The conduct of the plaintiff before the trial Court remained negligent throughout. There was abject failure to produce evidence in support of the suit even when several opportunities were granted by Court indulgence. The remedy against the order closing evidence was to file a revision before the High Court, but instead the plaintiff chose to file review application before the trial Court which got dismissed. No further remedy was taken by the plaintiff. When sufficient and proper reasons were not assigned for the delay, the Court must adopt stern attitude and refuse relief. The limitation law is a statute of repose and those who are found sleeping over their rights, their slumber should not be disturbed. To lend support to her decision, the District Judge, Panchkula relied on a decision of this Court in Smt. Santosh Vs. Director Health, Chandigarh & others, 2008 (4) RCR (Criminal) 721 and another of the Supreme Court in P.K.Ramchandran Vs. State of Kerala & another, 1997 (7) SCC 556.

In view of the above facts and circumstances, I find no legal infirmity in the judgment in appeal in turn dismissing the judgment and decree of the trial Court on the point of bar of limitation and would accordingly dismiss the present appeal.

24.08.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>