

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

RSA No.3815 of 2017 (O&M)
Date of decision : 31.07.2017

Prachin Shiv Mandir Society (Regd.)

...Appellant

Versus

Haryana Urban Development Authority and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Namit Gautam, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiff is in present Regular Second Appeal against the judgment passed by the First Appellate Court refusing to condone the delay of 346 days in filing the appeal.

The plaintiff had filed a suit for grant of decree of permanent injunction restraining the defendants from interfering into the peaceful working of the Mandir in the name of Prachin Shiv Mandir Society (Regd.). The suit was filed on 04.04.2011. The plaintiff did not produce any evidence. It has been recorded by the learned trial Court that after availing several opportunities with sufficient time gap, the plaintiff did not lead any evidence. The plaintiff was given as many as six opportunities, alongwith one final opportunity on 19.10.2015 with a

direction that if no evidence of the plaintiff is produced on the next date of hearing, the Court would be constrained to close the evidence. On 03.11.2015, once again plaintiff failed to produce any evidence and, therefore, evidence of the plaintiff was closed by order. Thereafter, the suit was dismissed under Order 17 Rule 3 CPC.

The plaintiff-appellant had filed the first appeal alongwith application for condonation of delay of 346 days. It was stated in the application for condonation of delay that on 21.10.2016, some officials of the respondents visited the spot in question and threatened to demolish the temple. On enquiry, the priest came to know that the suit filed by the appellant-plaintiff has been dismissed. Thereafter, the priest contacted the previous counsel and after getting the certified copy of the impugned judgment and decree, the appeal was filed.

Learned First Appellate Court after examining the facts available on the file has recorded following reasons while refusing to condone the delay in filing the appeal. Reasons are extracted as under:-

“6. The appellant has resorted to highly non-descriptive story while asking for condonation of delay. Moreover, the conduct of the appellant-plaintiff from the very inception of the case itself speaks volumes about the fact that the appellant-plaintiff is not vigilant for watching his own interest. In due course of proceedings of the stay application filed by the appellant was dismissed by the learned trial court and the appellant had not make any effort to challenge the said order. Further, after framing of issues on 15.07.2014, despite availing numerous opportunities the appellant-plaintiff failed to

lead any evidence in support of its claim, therefore, the learned trial court was left with no other option except to close its evidence and ultimately, the suit was dismissed in terms of order 17 rule 3 of CPC. Now, there is a delay of 346 days in filing the appeal. The appellant has not satisfactorily explained the reasons which may have prevented it from filing the appeal within the prescribed period of limitation.”

Against the order of refusing to condone the delay, the appellant has come up in Regular Second Appeal.

I have considered the submission of learned counsel for the appellant. He prays that the plaintiff is a religious institution and, therefore, liberal view should be taken by the First Appellate Court. Counsel for the appellant has further submitted that Courts have always been making endeavour to dispose of the appeal on merits, therefore, the delay in filing the appeal should have been condoned.

I have heard the submission of learned counsel for the appellant and with his able assistance gone through the paper book.

It is not in dispute that the suit was instituted on 04.04.2011. It remained pending for 4 ½ years before the trial Court. The plaintiff was given as many as six opportunities to lead the evidence. However, the plaintiff did not chose to produce any evidence. Therefore, the suit was dismissed under Order 17 Rule 3 CPC.

Even thereafter, the appellant filed an appeal with application seeking condonation of delay of 346 days. An application seeking condonation of delay of 346 days does not disclose any sufficient cause.

The assertions made in the application are sketchy. The assertion made in the application seeking condonation of delay are extracted as under:-

“4. That on 21.10.2016 some official of the respondents visited the spot in question and threatened to demolish the temple in question. Immediately the Pujari namely S.S. Kaushik asked the reason for the same, then it was told to him by the officials that the appellant has lost the battle in the court. Thereafter, the said Pujari immediately rushed to the courts at Panchkula to their earlier counsel and then it was confirmed that the suit filed by the appellant has been dismissed for lack of evidence. Thereafter, certified copy of judgment and decree dated 16.11.2015 was applied through the earlier counsel and after getting the certified copy of the same, the appellant has engaged the present counsel to file the present appeal. It is relevant to mention here that till 21.10.2016 it was not in the knowledge of the appellant that its suit has been dismissed for lack of evidence.”

The plaintiff-appellant appeared to be thoroughly negligent litigant. For 4 ½ years, no evidence was produced before the trial Court and thereafter even while filing the first appeal, there is a delay of 346 days which is almost a year. The reasons as given in the application seeking condonation of delay are not sufficient to condone the delay.

On expiry of the limitation for filing the appeal, right vests with the other party. Unless there are cogent reasons for condoning the delay, the delay in filing the appeal cannot be condoned. No doubt, Courts have been liberal in condoning the delay. However, the litigants have started taking undue benefit of the same. Each day, the Court is

faced with the appeals seeking condonation of delay.

For the reasons recorded above, I do not find any reasons to interfere with the judgment passed by the First Appellate Court.

Accordingly, present Regular Second Appeal is dismissed.

31.07.2017

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No