

DHAN KAUR AND ORS V/S STATE OF HARYANA AND ORS

Present: Mr.S.P.Khatri, Advocate
for the applicants-appellants

RA-RF-186-CI-2017

The applicants seek review of the order dated 02.06.2017, vide which, they were awarded enhancement in the compensation, in terms of the earlier decision of this Court (referred to below) and their appeal was disposed of. However, they were denied interest on the enhancement for the period of delay i.e. 1068 days in filing the appeal.

The facts that are required to be noticed are limited.

In the appeal, filed by the applicants they had assailed the award dated 24.03.2014, rendered by the reference Court. For, the appeal was concededly barred by 1068 days, an application under Section 5 of the Limitation Act (for short, 'the Act') was moved therewith. The matter came up before this Court on 02.06.2017, and, all what the counsel for the applicants urged was; that in the appeals arising out of the same acquisition i.e. RFA No.6809 of 2014 titled “**Raghibir and others vs. State of Haryana and others**”, and other connected cases, this Court vide order and judgement dated 18.02.2016, had enhanced the compensation. Accordingly, in the wake of decision of the Supreme Court in *Imrat Lal and others v. Land Acquisition Collector and others, 2015(2) RCR (Civil) 437* and *Dhiraj Singh (D) Tr. LRs. v. Haryana State and others, 2015 (2) RCR (Civil) 507*, the delay in filing the appeal was condoned, but to balance the equities, the appellants were deprived the interest on the enhanced

compensation, for the period of delay in filing the appeal. And, vide order of even date i.e.02.06.2017, the appeal too was disposed of in terms of the decision of this Court in the case of Raghbir (supra).

And now the ground upon which the review is being sought is;
“The appellants had given the certified copy of the reference court order on 03.09.2014 along with the counsel fee to Mr.Mor, Advocate. The appellants were not aware of the facts that the appeal could not be filed well in time but the same was filed with a delay of 1068 days. This mistake has been committed by the concerned Advocate, and the appellants may not be punished in this regard.

That after knowing the enhancement by the Hon'ble High Court in Raghbir Singh case, the appellants asked their advocate, why their case could not be listed along with a bunch matter of Raghbir Singh case. He told that you don't worry about it, if any case, which could not be listed, may be listed near future. But up-to December 2016 the concerned advocate did not give any information regarding the listing of the case. In February 2017, the appellant Ashok Kumar came to the High Court and inquired from the other sources that no appeal had been filed against the LAC No.196 of 2010 of District Sonapat. When Ashok Kumar contacted Mr.Mor Advocate and asked, when the papers along with the fee is given to you on 03.09.2014 then why you did not file the appeal. Then he told that your certified copy of the order had been misplaced by my clerk and I could not trace out. I will search my entire office and after getting the copy of the order, your appeal will be filed. Only then he filed the appeal on 29.05.2017, in the

Hon'ble High Court with the delay of 1068 days.” It is averred that apparently, the delay in filing the appeal had occurred owing to the mistake of their counsel, therefore, the order dated 02.06.2017 be reviewed and the applicants be also awarded interest upon the enhanced compensation even for the period of delay i.e. 1068 days.

I have heard learned counsel for the applicants and perused the records.

Ex facie, the application lacks bona fides and is speculative in nature. In fact, the version of the applicants in both the applications i.e. under Section 5 of the Act as also the review application, is wholly false and untrue. For, in the application, under Section 5 of the Act, it was averred that the applicants had contacted the office of Mr. Kamal Mor, on 03.09.2014 for filing the appeal, but since he was not in station, the papers were entrusted to his clerk, who in turn, placed them with the records of another matter. And, later, the said clerk left the office of the counsel. And all this came to the knowledge of their counsel only when the applicants contacted him on **19.05.2017**, to ascertain the status of their appeal. And after searching the records, the appeal was filed on 31.05.2017. If the applicants had indeed engaged a counsel as back as on **03.09.2014**, to file an appeal, it seems incredible that for a period of over three years, they never even once tried to ascertain its status. Particularly, when their counsel was not available and they entrusted the documents to his clerk. Not just that, having discovered that no appeal was filed and over three years had gone by, they still persisted and retained the same counsel to file the matter.

Needless to assert, that applicants were convinced within that the

explanation rendered in their application under Section 5 of the Act, hardly constituted any sufficient cause, which is why all what their counsel urged was that in the connected appeals the co-landowners had been awarded enhancement. It does not end there. In the review application, it has been pleaded in no uncertain terms, **“That after knowing the enhancement by the Hon'ble High Court in Raghbir Singh case, the appellants asked their advocate, why their case could not be listed along with a bunch matter of Raghbir Singh case. He told that you don't worry about it, if any case, which could not be listed, may be listed near future. But up-to December 2016 the concerned advocate did not give any information regarding the listing of the case. In February 2017, the appellant Ashok Kumar came to the High Court and inquired from the other sources that no appeal had been filed against the LAC No.196 of 2010 of District Sonapat. When Ashok Kumar contacted Mr.Mor Advocate and asked, when the papers along with the fee is given to you on 03.09.2014 then why you did not file the appeal. Then he told that your certified copy of the order had been misplaced by my clerk and I could not trace out. I will search my entire office and after getting the copy of the order, your appeal will be filed. Only then he filed the appeal on 29.05.2017, in the Hon'ble High Court with the delay of 1068 days.”**

There is an apparent conflict in the contents of the review application and the version of the applicants in their application under Section 5 of the Act. In their application for condonation of delay, the applicants purport to have met their counsel for the first time on 19.05.2017, for, he was out of station on 03.09.2014, i.e. when they had gone to engage

him. Whereas, in the review application, it is maintained that they entrusted the matter to Mr.Mor Advocate, on 03.09.2014 and paid his fee. Likewise, case of the applicants in their application under Section 5 of the Act is that their counsel discovered it for the first time on 19.05.2017, when the applicants contacted him that they had entrusted the matter to his clerk in his absence on 03.09.2014. Whereas their version in the review application is that post decision in the case of **Raghubir Singh**, they even checked with their counsel; why their appeal was not listed with Raghubir's case. The averment **“The appellants were not aware of the facts that the appeal could not be filed well in time but the same was filed with a delay of 1068 days”** also lacks credibility. For, the appeal, as also the miscellaneous applications, including the application under Section 5, were duly supported by an affidavit of one of the applicants namely Ashok Kumar, who had signed all the documents in English. Further, in the review application, it is urged that appellant Ashok Kumar came to the High Court in February 2017, and enquired from his sources that no appeal had indeed been filed by Mr.Mor, Advocate, against LAC No.196 of 2010 of District Sonapat. It defies logic that the appellants still waited for a period of four months and filed the appeal through the same counsel on 31.05.2017. In fact, what appears to have happened is that albeit the applicants obtained the copy of the impugned award in 2014 itself, but they felt encouraged to file an appeal after the decision of this Court in *Raghubir Singh and others(supra)*, and claimed the same compensation. Apparently, the application is speculative and is an afterthought. In any case, whether, the applicants or their counsel was remiss in pursuing their cause, is inconsequential. For, the

State cannot be penalised for their lapse or made to bear any financial burden by awarding interest even for the period of delay of over three years. Thus, the only and the inevitable conclusion that could be reached is; that the application is not only devoid of merit but is also an abuse of process. And is accordingly, is dismissed.

CM-8075-CI-2017

For, vide an order of an even date, the review application has been dismissed on merits, no formal order is necessary to be passed in this application. The same is accordingly disposed of.

August 10, 2017
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(ARUN PALLI)
JUDGE