

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

CR No.1590 of 2015

Date of Decision : 13.07.2018.

Bohar Singh and another

... Petitioners

Versus

Sandhura Singh (now deceased) through L.Rs. and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. G.L. Bajaj, Advocate for the petitioners.

B.S.WALIA, J.

1. Prayer in this revision petition under Article 227 of the Constitution of India is for the setting aside of order dated 28.08.2014 (Annexure P-4), passed by the learned Addl. District Judge, Faridkot, dismissing the application under Section 5 of the Limitation Act, 1963 read with Order 41 Rule 3-A of the Code of Civil Procedure and consequently the appeal.

2. Brief facts of the case leading to the filing of the instant revision petition are that respondent No.1/plaintiff filed a civil suit for permanent injunction for restraining the petitioners/defendants from interfering in the peaceful possession over house No. B.V.1999 situated in Rasal Pati Jaitu, Tehsil Jaitu, District Faridkot on the ground that he was owner in possession of the house in question since the date of its purchase. Respondent No. 1/plaintiff further claimed that he was married to petitioner No.2/defendant, who claimed herself to be a widow having three children i.e. two daughters and one son and after marriage to him, petitioner No.2/defendant No.2 had given birth to one more son from the

loins of respondent No.1/plaintiff (since deceased), but later on respondent No.1/plaintiff came to know that the previous husband of petitioner No.2/defendant No.2 was alive and that she had not taken divorce from him, as such, the marriage of respondent No.1/plaintiff with petitioner No.2/defendant No.2 was void. Respondent No.1/plaintiff finished all links with petitioner No.2/defendant No.2 and started residing separately from her since last more than 20 years but now the petitioners/defendants were bent upon dispossessing respondent No.1/plaintiff from the house in dispute.

3. The suit was decreed by the Court of the learned Civil Judge (Junior Division), Faridkot vide judgment and decree dated 10.12.2008 in the presence of counsel for parties and the petitioners/defendants were restrained from dispossessing and interfering in the peaceful possession of the plaintiff/respondent No.1 (since deceased) over the house in question.

4. The judgment and decree dated 10.12.2008 was challenged by the petitioners/defendants by filing regular first appeal along with an application bearing No. Civil Misc. Appl.6 of 08.01.2011 RT No.15 of 01.04.2014 for condonation of approximately 1100 days in late filing of the appeal with a prayer for the hearing of the appeal on merits on the plea that the petitioners/defendants were under a bonafide belief that respondent No.1/plaintiff (since deceased) had withdrawn the suit as promised by him in the presence of common friends, relatives and respectables in the beginning of December, 2009, whereas the suit filed by him stood decreed on 10.12.2008 as was learnt by the petitioners in the last week of December, 2010 when the petitioners were asked by Jagga Singh alias Joga

Singh son of late Sandhura Singh respondent No.1/plaintiff to vacate the house in question. It is further the stand of the petitioners that they rushed to their counsel, who told them that he had already obtained the copy of judgment and decree on 18.11.2010 which was applied by him 08.11.2010 and handed over the same to the petitioners in the last week of December, 2010, whereupon they engaged another counsel of their choice and filed the appeal on 04.01.2011. Thus the appeal was claimed to have been filed within period of limitation from the date of knowledge, otherwise there was delay of approximately 1100 days in late filing of the appeal due to the wrong assurance held out by late respondent No.1/plaintiff and blind confidence reposed by the petitioners/defendants. In the circumstances, plea was that there was no willful, intentional and malafide delay in filing of the appeal. Accordingly, prayer was for allowing the application.

5. It needs mention here that only respondent No.2 i.e. Jagga Singh alias Joga Singh son of late Sandhura Singh i.e. respondent No.1/plaintiff appeared through counsel on notice being issued on application, whereas Amarjit Kaur i.e. respondent No.3 and Veerpal Kaur i.e. respondent No.4 did not put in appearance despite service.

6. The application was opposed on the ground that the petitioners were trying to stab the deceased Sandhura Singh, when he was not alive to give reply and it was very strange that the petitioners had failed to explain as to what their counsel was doing before the learned trial Court for while the judgment and decree was passed on 10.12.2008, the appeal was filed on 07.01.2011.

7. Learned counsel contends that the impugned order is legally unsustainable as adequate opportunity was not given to the petitioners to lead evidence. Further as per law lenient view was to be taken while deciding the application for condonation of delay and on account of dismissal of the application, valuable rights of the petitioners were being affected, therefore, the impugned order was liable to be set-aside.

8. The Addl. District Judge, Faridkot dismissed the application and consequently the appeal vide order dated 28.08.2014 on the ground that the petitioners/defendants had failed to challenge judgment and decree dated 10.12.2008 during the life time of respondent No.1/plaintiff and it was only after his death that they filed an appeal along with an application seeking condonation of delay in late filing of the appeal. The Addl. District Judge, Faridkot held that the counsel who had been pursuing the case of the petitioners/defendants had also not been examined. The Addl. District Judge, Faridkot further held that the suit filed by respondent No.1/plaintiff was merely a suit seeking permanent injunction for restraining the petitioners/defendants from interfering in his peaceful possession and from dispossessing him on the ground that he was owner in possession besides the Civil Judge had held that the property being self acquired property of respondent No.1/plaintiff in terms of sale deeds dated 06.09.1988 and 11.07.1989, the petitioners/defendants had no concern with the same, therefore, for reasons best known to them, they had not challenged the judgment and decree dated 10.12.2008 during the life time of respondent No.1/plaintiff. In the aforementioned background, the learned Addl. District Judge, Faridkot held that the petitioners/ defendants had

failed to substantiate sufficient cause to seek condonation of delay in late filing of the appeal.

9. I have considered the submissions of learned counsel for the petitioners.

10. In view of the position as noted above as also in view of the fact that judgment and decree dated 10.12.2008 was passed in the presence of counsel for the petitioners/defendants, the petitioners/defendants have failed to make out sufficient cause for filing the appeal after a delay of approximately 1100 days. Besides as per stand in the application under Section 5 of the Limitation Act, respondent No.1/ plaintiff is alleged to have stated in the beginning of 2009 before respectables etc. that he had taken a wrong step by filing a suit against the petitioners/defendants, therefore, the petitioners were under the bonafide impression that respondent No.1/plaintiff had withdrawn the suit. However, as per record the suit was decreed on 10.12.2008 in the presence of Shri Uma Shankar Sharma, Advocate, learned counsel for the petitioners/defendants. Another aspect of the matter is that if the suit was decreed on 10.12.2008 in the presence of counsel for the parties and the petitioners/defendants learnt about the same only in the first week of December, 2010, it is beyond comprehension as to why the counsel for the petitioners/defendants in whose presence the judgment and decree dated 10.12.2008 was passed, applied for copy of the same on 08.11.2010 and on being approached by the petitioners/defendants told them that he had already obtained the copy on 18.11.2010 and handed over the same to the petitioners/defendants in the last week of December 2010, whereafter, the petitioners/defendants

filed the appeal in the first week of January, 2011. It is apparent that the application has been filed on concocted facts much after the death of respondent No.1/plaintiff. Even otherwise, the facts of the case do not reflect exercise of good faith i.e. due care and attention as is contemplated in Section 2 (h) of the Limitation Act, 1963. In the circumstances, I am of the considered view that the petitioners have failed to make out sufficient cause for seeking condonation of delay in late filing of the appeal.

11. Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

12.07.2018

rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No