

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

C.R. No.1847 of 2018

Date of Decision.19.03.2018

Municipal Corporation Gurugram

Vs

.....Petitioner

Mahesh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lokesh Sinhal, Advocate
for the petitioner.

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AMIT RAWAL J.(ORAL)

The petitioner-Municipal Corporation is aggrieved of the impugned order dated 22.02.2018 whereby the appeal preferred against the order dated 03.10.2017 rendered by the Civil Judge (Sr. Divn), Gurugram disposing of the application under Order 39 Rule 1 and 2 CPC, has been dismissed being barred by 71 days of delay.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioner submits that the trial Court vide order dated 03.10.2017 in a suit preferred by the respondent-plaintiff for declaration and permanent injunction had injuncted the parties from alienation, construction and changing the land use, much less, creation of third party rights by observing that the aforementioned order shall not be considered as an expression on merits of the matter but the aforementioned order was assailed by the petitioner-Corporation by filing an appeal but by that time delay of 71 days had occurred. The delay was neither intentional nor willful but owing to the facts and circumstances explained in the application as certain decisions were taken to file the appeal on merits. He submitted that the necessity arose to file the appeal owing to certain observations rendered with regard

to nature of the land, which is yet to be adjudicated in a pending suit. Therefore, the delay of 71 days occurred. He submitted that in such eventuality, the lower Appellate Court ought to have condoned the delay and heard the matter on merits.

I have heard learned counsel for the petitioner and appraised the paper book. The operative part of the order dated 3.10.2017 whereby the injunction order has been passed reads as under:-

“24. The above said order shall remain operative till the final decision of the present suit. The abovesaid observations shall not affect the final merits of the case.

25. It is observed that earlier despite status quo orders by the Civil Court, violations were made by some officials and individuals, which multiplied the litigation, in addition to being contemptuous and illegal. To ensure the implementation, in letter and spirit, the abovesaid directions and the mandate of the Hon'ble High Court of Punjab and Haryana in CWP No.7112 of 2017 (O&M) dated 10.08.2017, the concerned Assistant Commissioner of Police (ACP), Sub Divisional Magistrate (SDM) and City Magistrate (CTM) having jurisdiction over the village Gwal Pahatri, Gurugram shall keep, round the clock vigil, to the effect that no alienation, construction or change of land use is effected by either party and no third party rights or encumbrances are created by either party. They shall submit a monthly report in this court jointly, on the first working day of every month. In case of default by any individual or official, they shall immediately initiate proceedings as per law, which would necessarily include penal action against the violator, under intimation to this Court. A copy of this order be forwarded to the abovesaid ACP, SDM and CTM concerned, for immediate compliance. Also copies of this order be forwarded to District Collector Gurugram, head of revenue authority, and the concerned Registrar/Sub-Registrar, Gwal Pahari, Gurugram,

the incharge of registering authority, who shall ensure that the abovesaid restrain order in regard to, change in land records, land use and any further alienation, is implemented, in letter and spirit, in regard to abovesaid land of village Gwal Pahari, till the decision of the question of title in these civil suits.

26. Now to come up on 10.10.2017 for filing of replication and framing of issues.”

In my view, there was no occasion for the Municipal Corporation to assail the aforementioned order as it was only an observation qua the adjudication of the ad interim application as it was subject to the outcome of the final adjudication of the suit. Filing of the appeal, in my view, was, a farcical exercise. Therefore, it would not be in the fitness of things to condone delay of 71 day for relegating the matter to the lower Appellate Court and decide the appeal on merits.

As an upshot of my finding, the order under challenge is upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

March 19, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No