

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.3959 of 2009 (O&M)

Reserved on: May 21st, 2018

Pronounced on: 31st May, 2018

Balbir Singh and another

..Petitioners

versus

The Shivalik Environ Cooperative Housing Building Society Limited
Saketri and another.

..Respondents

and

Civil Revision No.3960 of 2009

Balbir Singh and others

..Petitioners

versus

The Shivalik Environ Cooperative Housing Building Society Limited
Saketri and others

..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. S.K.S.Bedi, Advocate, for the petitioners.

Mr. Aashish Chopra, Advocate
with Mr. Akshay Chadha, Advocate,
for respondent no.1.

Mr. Rajesh Sethi, Advocate,
for respondent no.2.

RAMENDRA JAIN, J.

1. By this common judgment, the above titled two revision nos.3959 and 3960 of 2009 are being disposed of together as the question of facts and law involved therein are identical. However, for the sake of convenience, facts are being extracted from Civil Revision No.3959 of 2009.

2. The facts required for disposal of this revision are that Ram

Partap son of Jatti Singh, a blind person, was absolute owner in possession to the extent of his share in the suit land, detailed in para no.3 of the plaint. Respondent no.2 Jaspal Singh forged a general attorney dated 23.6.1992, allegedly, executed by plaintiff Ram Partap and some other persons. Respondent no.2, on the basis of said attorney sold the suit land to respondent no.1-Society vide eight different registered sale deeds dated 5.10.1995 and 6.10.1995. In the month of December 1995, the respondents tried to dispossess the petitioners forcibly and illegally from the suit land, but on account of timely intervention of respectables of the village, the respondents could not succeed in their evil design. The petitioners have been requesting the respondents time and again to get the sale deeds in their favour cancelled as null and void, but to no avail.

3. It is worth mentioning that during the pendency of the suit, plaintiff Ram Partap expired. On the basis of will dated 20.8.1998, Balbir Singh and Gurnaib Singh, being grand-sons of deceased Ram Partap, claiming themselves to be their legal heirs were impleaded as plaintiffs in the suit.

4. Upon notice, despite service through munadi, none put in appearance on behalf of respondent no.2, therefore, he was proceeded against ex parte on 21.11.1998.

5. Respondent no.1-Society contested the suit pleading that the suit was not maintainable in the present form. It (Society) was a bona fide purchaser in possession of the suit land. Therefore, the sale deeds in question were binding upon the petitioners. On account of rise in prices, deceased Ram Partap, became dishonest and during his life time, in connivance with respondent no.2, filed civil suit against respondent no.1.

The general attorney dated 23.6.1992 executed by Ram Partap in favour of respondent no.2 was a genuine document.

6. On the basis of pleadings, the learned trial court framed the following issues:-

“1. Whether sale deeds dated 5.10.1995 and 6.10.1995 and the mutation of the same in favour of defendant no.1 in respect of the land as detailed and described in the head note of the plaint and general power of attorney dated 23.6.1992 alleged to be executed by the plaintiff in favour of defendant No.2 are illegal, null, inoperative, in effective and not binding upon the rights of the plaintiff and are liable to be set aside, as prayed?

OPP

2. If issue no.1 is proved, whether plaintiff is entitled for permanent injunction as prayed for? OPP

3. Whether suit of the plaintiff is not maintainable in the present form?OPD

4. Relief.

7 Despite granting three effective opportunities to the petitioners, they did not adduce evidence in support of their case. Finding no option, the trial court, vide order dated 8.6.2004 closed the evidence of the petitioners under order 17 Rule 3, CPC, and dismissed the suit of the petitioners vide judgment and decree dated 8.6.2004, holding that since there was no cogent and convincing evidence available on the record, therefore, no weightage could be given to the pleadings, which have strongly been refuted by respondent no.1-Society in the written statement filed by it.

8 Against the judgment and decree dated 8.6.2004, the petitioners, after the expiry of period of 03 years and 09 months, preferred appeal accompanying application under section 5 of the Limitation Act praying for condonation of delay of aforesaid period, averring that they, being illiterate persons, were only acting upon the instructions of their counsel representing them before the trial court. They were not aware of the fact that the suit filed by them was got dismissed by their counsel about 4 years ago. One Balwan Singh, claiming himself to be the owner of various Cooperative Societies, wanted to get them forcibly dispossessed from their house in village Saketri. Resultantly, it was only in the second week of March, 2008, when they contacted their counsel Shri P.C.Sharma, Advocate, came to know that all their suits have already been dismissed.

9 On 15.3.2008, the petitioners engaged another counsel Shri S.K.S. Bedi, Advocate and entrusted him the documents concerning their cases. On going through the record, it transpired that the trial court had dismissed their suit for want of evidence. Shri P.C.Sharma, Advocate, neither guided properly nor intimated them about dismissal of their suit and that appropriate proceedings were required to be initiated for getting the judgment and decree dated 08.06.2004 passed by the trial court, set aside.

10 It was pleaded that delay in filing the appeal was unintentional. They, being the rustic villagers, only know how to sign and were totally dependent upon the advice of their counsel. In case, delay in filing the appeal is not condoned, they would suffer irreparable loss, in view of the fact that their ancestral house would be grabbed by respondent no.1, illegally and forcibly. Respondent no.2 had been absconding since 1995

after coming to know that fraud committed by him has come to light.

11 After hearing both the sides, the learned first appellate court dismissed the application of the appellants for condonation of delay of about 04 years, holding that they could not sufficiently explain each day's delay in filing the appeal. Consequently, the appeal was also dismissed being barred by limitation.

12 Learned counsel for the petitioners has vehemently contended that the petitioners, being illiterate persons, were not aware of the dismissal of the suit by the learned trial court, on account of the fact that their counsel did not inform them of the result of the suit for almost four years. The dismissal of the suit came to their knowledge only in the second week of March, 2008 and immediately thereafter, they filed appeal before the first appellate court, accompanying application for condonation of delay of more than 03 years and 09 months. A liberal approach was required to be adopted by the learned first appellate court in the matter of condonation of delay, more particularly when appellants were illiterate, being not conversant with intricacies of law and totally dependent upon the advice of their counsel. In support of his contention, learned counsel for the petitioners has relied upon judgments in **Dilbagh Singh versus Collector Land Acquisition** a Division Bench judgment of this court, decided on 15.3.2002; **Harbans Singh versus Sukhchain Singh and another** (SAO No.26 of 2004) decided on 29.1.2009; **Ram Nath Sao @ Ram Nath Sahu and others versus Gobardhan Sao and others**, decided on 27.2.2002; **N. Balakrishnan vs. M. Krishnamurthy**, decided on 03.09.1998; **Sushil Kumar and others versus Smt. Dhanpati and others**, CR No.2223 of 2013, decided on 20.11.2013; and **Harphool (deceased) through LRs and**

others versus **State of Haryana and others** (CM No.11664-C1 of 2016 in/and RFA No.4237 of 2016), decided on 17.11.2016.

13 On the other hand, learned counsel for the respondents has assiduously argued that the finding recorded by the learned first appellate court that the appellants could not explain each day's delay satisfactorily in filing the appeal, resulting in dismissal of their application for condonation of delay as well as appeal, being barred by limitation, is perfectly correct and cannot be held to be erroneous in any manner, on the ground that one of the petitioners, namely, Balbir Singh, who had signed attorney dated 23.6.1992 and application dated 29.4.2008 (Annexure P-2) for bringing on record the legal representatives of deceased Ram Partap, was vigilant in pursuing his case before the learned trial court. The petitioners did not file any affidavit of the earlier counsel representing them before the trial court to prove that he did not inform them regarding dismissal of the suit. The appeal was filed after the expiry of 30 days from the date of their alleged knowledge. In support of their contention, they have placed reliance upon the judgments in **Balwant Singh (dead) versus Jagdish Singh and others**, AIR 2010 Supreme Court 3043 and **Lanka Venkateswarlu (Dead) by LRs versus State of Andhra Pradesh and others.** (2011) 4 Supreme Court Cases 363.

14 Having given thoughtful consideration to the submissions raised by learned counsel for the parties, this court is of the view that both revisions deserve to be dismissed for the reasons to follow:

15 The core question that requires consideration is - whether the petitioners have been able to establish on the record 'sufficient cause' for not presenting the appeal in time and if not, what would be the effect? It has

been held time and again by their Lordships of the Hon'ble Supreme Court that even after "sufficient cause" has been shown, a party, as a matter of right, is not entitled to condonation of delay in question. In the backdrop of this case, the facts and circumstances of the instant case are required to be examined meticulously in the light of observations made in para no.7 of the judgment delivered by their Lordships of the Hon'ble Supreme Court in Balwant Singh's case (supra), which reads as under:-

“ It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration.”

A perusal of averments made in the application for condonation of delay clearly spells out that the petitioners have assailed the findings of the learned appellate court mainly on the grounds of their illiteracy; non-intimation of the result of the suit by their counsel to them, even after spanning over a period of almost four years, thereby causing a considerable delay in filing the appeal.

16 So far as the primary plea of the petitioners that they, being illiterate and rustic villagers not knowing the intricacies of law, were not vigilant enough in pursuing their case effectively and attentively is concerned, the same is falsified from the fact that Balbir Singh, one of the petitioners, has signed attorney dated 23.6.1992 as also application dated 29.04.2008 for bringing on record the legal representatives of deceased Ram Partap. His putting signature on the above documents, instead of thumb marking, the same, in itself, is sufficient to draw an inference that he could understand the facts and circumstances of the case and ongoing proceedings before the trial court. Moreso, once the petitioners engaged a counsel to defend their case, it cannot be said that they were unable to pursue their case on account of their illiteracy. A cumulative effect of above circumstances shows that petitioner Balbir Singh, ever since the time of filing of the suit, had been vigilant in pursuing his case before the learned trial court. Even otherwise also, the petitioners were not supposed to leave their case completely unattended even after engaging counsel to contest on their behalf. They were required to remain in touch with their counsel on regular basis with a view to collect up-to-date information with respect to the proceedings of their case, but surprisingly enough, the sequence of events show that the petitioners remained lethargic and inattentive throughout proceedings of the case, as if they had instituted the civil suit just to pressurise the opposite party and drag them unnecessarily in false and frivolous litigation.

17 Dealing with the second plea of the petitioners that the counsel representing them before the trial court did not intimate them about the decision of their suit, for a period of almost four years is concerned, this

court is of the firm view that an illiterate person, after appearing in court, becomes more wise and curious to know about the status of the case from his counsel after coming into contact with other villagers, who are well conversant with the proceedings of the case as to when and at what stage, he had to produce witnesses in support of his case before the trial court.

18 A perusal of the file shows that three effective opportunities were granted to the petitioners to produce their witnesses before the trial court, but they failed to substantiate their case, resulting in dismissal of their suit for want of evidence. More importantly, the petitioners even did not bother to make contact with their counsel to know about the fate of their case. Even if, for the sake of arguments, it is presumed that petitioners' counsel did not intimate them about the result of their suit, they did not report the matter to the Bar Council regarding alleged misconduct of their counsel, nor did they place on record the affidavit of his previous counsel, explaining reasons for not filing the appeal in time or causing delay in intimating the decision of the suit or proper guidance regarding further course of action after the judgment and decree passed by the learned trial court.

19 For keeping mum over the matter for such a long period, one can easily draw an inference that the petitioners, after impleading them as legal representatives of deceased Ram Partap in suit, remained so passive or silent that they left their cases unattended at the mercy of their counsel and did not attempt to remain in touch with him, even after paying legal fees and other misc. expenses, incurred in the conduct of their case. In the facts and circumstances of the case, this court arrives at the conclusion that the petitioners were not interested and serious in pursuing their case in its

letters and spirit deeply.

20 Another important aspect that can be drawn is that had the case of the petitioners been true, they must have defended it effectively, more attentively, remaining in contact with their counsel at each and every stage of the proceedings of the case and appearing into the witness box to prove their case by producing cogent and convincing evidence before the trial court.

21 The facts, as emerged out from the pleadings, the petitioners filed a civil suit before the learned trial court just to drag the opposite party into unnecessary litigation, to put undue pressure upon it and to black-mail knowing well that they would not be able to prove before the court that sale deeds executed by respondent no.2 on the basis of general attorney dated 23.6.1992 executed by Ram Partap and some other persons were illegal, null and void. That was the reason that the petitioners chose not to appear before the trial court and remained silent over the matter tightly for a period of nearly four years and then suddenly awakened from a great slumber, engaged another counsel and handed over him brief with the sole motive to keep the litigation alive so as to extract more money from the vendees.

22 The Finding of the learned first appellate court that the petitioners were required to explain reasons satisfactorily for not filing the appeal almost for a period of four years, in my considered opinion, is correct which cannot at all be disturbed in any manner. This court is in agreement with the learned first appellate court that it was obligatory on the part of the petitioners to explain each day's delay satisfactorily in presenting the appeal. The contention of the learned counsel for the petitioners that each day's delay in the instant case was not required to be explained, in the

considered opinion of this court, is not sustainable in the eye of law. It is a deliberate inaction on the part of the petitioners to seek condonation on unreasonable grounds. The petitioners can not at all be said to be really bona fides in projecting their case honestly so as to make them entitled to condone the delay of almost for four years in filing the appeal. Therefore, this court does not find any illegality or perversity in the impugned judgments passed by the learned first appellate court and that of judgments and decrees passed by the learned trial court in both the revisions, that may warrant interference by this court.

23 The facts and circumstances of the cases cited and relied upon by learned counsel for the petitioners are not identical to the case in hand. This court has no dispute with the law laid down in the cases referred to above, but at the same time, it has to be borne in mind that each case has its own peculiar facts and circumstances to be adjudicated upon. Therefore, no benefit of the same can be given to the petitioners in any manner. Rather, the authorities relied upon by the learned counsel for the respondents are only guiding factor for effectively arriving at a just conclusion of the case defining the meaning of “sufficient cause”, as has been discussed by the Hon'ble Apex Court, in **Balwant Singh's case supra** referred to above.

24 In view of what has been observed above, both revisions nos 3959 and 3960 of 2009 filed by the petitioners fail and are hereby dismissed.

May 31st, 2018
VK

(RAMENDRA JAIN)
JUDGE

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|----|-------------------------------|---------|
| 1. | Whether speaking/non-speaking | Yes/No |
| 2. | Whether Reportable | Yes/No. |