

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

CR No.3410 of 2015 (O&M)

Date of decision : January 24, 2018

Jasvir Singh

..... Petitioner

Versus

Amar Singh (since deceased) through LRs and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anish Setia, Advocate for the petitioner.

Mr. Vijay Rana, Advocate for the respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 20.02.2015 passed by the learned Addl. District Judge, Fast Track Court (Ad hoc), Jalandhar, vide which the application filed under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the civil appeal was dismissed.

Brief facts of the case as coming out from the documents placed on file are that the plaintiff-petitioner filed a suit for declaration challenging the sale deed on 02.09.2000. The case remained pending before the trial court till 08.08.2008. The plaintiff-petitioner was granted a large number of opportunities and after granting last opportunity, his evidence was closed by orders on 08.08.2008 under Order 17, Rule 3 CPC, 1908 and consequently, for want of any evidence, the suit was dismissed.

It also comes out from the trial court order that the certified copy of the said order was applied on 03.09.2008 and was prepared on

03.10.2008 and was supplied on 04.10.2008. The appeal was filed on 23.08.2009 along with an application under Section 5 of The Limitation Act, 1963, stating that the plaintiff-petitioner is an NRI and residing in Canada. He came to India and enquired about the fate of the case from his counsel and came to know that his suit was dismissed. On listening this, he suffered a heart attack. The doctor advised him to take rest. Except this, delay was not explained by giving dates on which he came to know about the order and when he came back to India and for how long, he remained under treatment. However, an application under Section 151 CPC, 1908 was filed, in which it was stated that he has suffered heart attack and was got operated. The copy of the passport and medical record were attached with the said application. It was further explained that he came to India in February 2009 and in the second week of March, 2009, he went to the earlier counsel regarding the progress of the case and was told that the case has been decided and the plaintiff-petitioner is required to file an appeal. Except these averments, no further averment was made.

I have heard learned counsel for the parties and have also carefully gone through the case file.

First of all, it is to be noticed that the case before the trial court remained pending for eight years. The passport of the plaintiff-petitioner shows that during the intervening period from years 2000 to 2008, he had come to India twice in the year 2006. The case continued for eight years but no evidence was produced by the plaintiff-petitioner and ultimately his evidence was closed by orders and under Order 17, Rule 3 CPC and his suit was dismissed on 08.08.2008 for want of evidence.

According to the plaintiff-petitioner, he came back to India on 05.02.2009. It is not explained as to whether from 08.08.2008 to 05.02.2009, he ever tried to contact his counsel from Canada or tried to enquire about the fate of the case? It appears that the plaintiff-petitioner remained mum from 08.08.2008 to February 2009. Even thereafter, he is stated to have contacted his counsel in the second week of March, 2009 i.e. after more than one month of his arrival in India and when he was told about the dismissal of the suit.

The medical record attached with the petition shows that the plaintiff-petitioner had some heart problem and stunting was done and he remained admitted in hospital from 23.03.2009 to 30.03.2009. Even if, 15 days period before the said admission and 15 days after the admission are excluded, there is no explanation as to why the appeal was not filed till 23.08.2009. The limitation of filing of the appeal was 30 days. Even after excluding of the said period of treatment and resting period of the plaintiff-petitioner, there is huge delay. The plaintiff-petitioner has already taken the legal system for ride by not producing the evidence for full eight years.

Learned counsel for the plaintiff-petitioner has relied upon the authority of Division Bench of this Court, delivered in “***Aptech Engineers, Gurgaon vs State of Haryana and others***”, 2014(30) R.C.R.(Civil) 187, in which delay of 70 days was condoned in a tax matter. He has also relied upon the authority of Apex Court delivered in “***M/s Esbee Inds. Corpn. Vs M/s. Bulk Systems Int. Ltd.***”, JT 2000(10) SC 281, in which delay of 161 days in RSA was condoned.

In the case before the Apex court, the case was contested before the trial court and in appeal and the facts of the said case are entirely different.

In view of the foregoing discussions, this Court is of the view that the application filed under Section 5 of The Limitation Act, 1963 was rightly dismissed by the learned Addl. District Judge, Fast Track Court (Ad hoc), Jalandhar. Thus, there is no ground to interfere in the impugned order.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

January 24, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No