

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 101

CR-379-2016

Date of decision : 21.11.2018

Rajinder Singh and another

..... Petitioners

VERSUS

Hukam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Sheena Khanna, Advocate, for the petitioners.

Mr. D. K. Nagar, Advocate, for the respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 25.08.2015, passed by the District Judge, Shaheed Bhagat Singh Nagar at Nawanshahr (for short, the Appellate Court) through which the petitioners' appeal filed by them against the judgment and decree dated 22.01.2013, passed by the Trial Court has been dismissed on the ground of delay.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioners filed a suit seeking therein possession after partition of the property detailed and described in the plaint. On being put to notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and contested the petitioners' claims. The Trial Court after sifting the evidence which had come on record, through judgment and decree dated 22.01.2013 dismissed the petitioners' suit. Challenge was made by the petitioners to the aforesaid judgment and decree by way of an appeal filed by them before the Appellate Court. However, since such appeal had been filed after a delay of 217 days, the same was dismissed on the ground of such delay as the Appellate Court did not find any sufficient cause given by the petitioners for the above delay.

It is in these circumstances that the present petition has been preferred by the petitioners to challenge therein the dismissal of their appeal on the ground of delay.

Learned counsel for the parties have been heard.

There are two petitioners. Petitioner No. 1-Rajinder Singh has sought to explain the delay in filing of the appeal before the Appellate Court on the ground that he had fallen down resulting in injury to his backbone due to which he remained bed ridden for seven months. Petitioner No. 2-Daljit Singh submits that he could not file the appeal in time as he was attending to petitioner No.1 when petitioner No. 1 was bed ridden. Finding no medical record in support of the assertion made by petitioner No.1 and for the reason that in his cross-examination petitioner No. 1 had conceded that he was not in possession of any document to show that he remained under treatment of any doctor as also in view of his admission that he had learnt about the outcome of the dismissal of his suit one month after the date of its decision and thereafter he also remained in contact with his counsel, the Appellate Court did not accept the explanation given by petitioner No. 1 for the delay in filing the appeal. So far as petitioner No. 2 is concerned, since he had stated that he was attending to petitioner No. 1, once the explanation given by petitioner No. 1 was rejected, consequently, petitioner No. 2's explanation also fell flat.

Neither before the Appellate Court nor before this Court any evidence has been produced by the petitioners which would corroborate the stand taken by petitioner No. 1 that for a period of seven months he was consistently receiving treatment for having injured his backbone and that for the above period he was bed ridden. Learned counsel for the petitioners

also does not dispute the admission made by petitioner No. 1 in his cross-examination that he had acquired knowledge with regard to the dismissal of his suit within one month of its dismissal and that thereafter he was in constant touch with his counsel.

In view of the above, no error can be found in the order passed by the Appellate Court dismissing the petitioners' appeal on the ground of delay especially when petitioner No. 2 was admittedly hale and hearty and could have pursued the matter with regard to the filing of the appeal in time against the dismissal of the petitioners' suit.

Dismissed.

21.11.2018
shamsher

[DEEPAK SIBAL]
JUDGE

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