

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

CR No.4082 of 2005 (O&M)
Date of decision : 18.12.2018

State of Haryana and others

...Petitioners

Versus

Prem Kumari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Ram Chander, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

State of Haryana is in the revision petition against the order passed by the learned First Appellate Court dismissing the first appeal as well as cross-objections on the ground that the delay in filing the appeal has not been properly explained and hence no sufficient cause is made out for condoning the delay of 380 days.

Some facts are required to be noticed. The plaintiff filed a suit for declaration and consequential relief of permanent injunction claiming that their predecessor-in-interest was allotted the land measuring 52 kanals 16 marlas by the Central Government being evacuee property. The plaintiffs claimed that there are certain 'Kikar' trees standing on the land which are sought to be harvested and removed by the State Officials which is illegal.

State of Haryana contested the suit and pleaded that the land is

under the possession of Irrigation Department where Rakshi drain has been constructed and it is part of the protected forest.

Learned trial Court on appreciation of the evidence found that the plantation has been done by the State Government. However, since the land belongs to the plaintiffs, therefore, the suit was partly decreed directing the State Government to share half of the value of the trees which had been harvested and sold by the State Government.

One appeal and cross objections were filed against the aforesaid judgment passed by the learned trial Court. Alongwith the appeal, an application for condonation of delay was filed pointing out that there is a delay of 380 days in filing the appeal. In the application, State Government has pleaded as under:-

“2 (a) That the judgment and decree dated 31/5/2002 were passed by the Ld. Trial Court thereafter the concerned Law Officer sent the comments through District Attorney, Karnal to Legal Remembrancer Haryana Chandigarh. The Range Forest Officer Indri after marking the list of disputed trees sent to Divisional Forest Officer, Karnal. The plaintiffs/respondents moved an application in view of the impugned judgment and decree sheet. The case was thoroughly examined by the officials of the Divisional Forest Officer, Karnal and was sent to Higher Authority i.e. Conservator of Forest North Circle Panchkula. After considering the facts and circumstances of the case as well as evidence led by the defendants/applicants in Trial Court it was decided by the department that it is a fit case for filing an appeal in the court of Ld. District Judge Karnal and the instruction were got issued from the office of Legal Remembrancer Haryana Chandigarh in this regard for

doing the needful. As soon as the orders were received from the Higher Authority in the office of Divisional Forest Officer Karnal the present appeal was got prepared after consultation with the concerned Law Officer in the office of District Attorney Karnal and in this process delay of 380 days has accrued but the same is not intentional, rather due to officials correspondence at different stages and keeping in view the public interest the delay in filing the appeal should be condoned.”

It was further contended before the First Appellate Court that the allotment in favour of predecessor-in-interest of the plaintiffs has also been cancelled vide order dated 21.11.2002 and, therefore, the entire basis of the suit has cease to exist.

However, learned First Appellate Court, as noticed above, dismissed the application for condonation of delay.

No doubt, the delay is required to be explained properly. The State cannot take benefit of lethargy of its officials. However, at the same time, the First Appellate Court should not overlook the fact that it is a last Court of appreciation of the evidence. The first appeal is a valuable right and effort should be made to decide the case on merits rather than throwing out the first appeal on technicalities. The grounds for seeking condonation of appeal as extracted above show that the State Officials were dealing with the file and since there were so many channels involved, therefore, filing of the appeal was delayed. In these circumstances, the First Appellate Court ought to have taken a view which is justice oriented. Still further, the First Appellate Court without recording any reason, has also dismissed the cross-objections.

Learned counsel for the respondents has pleaded that he has no instructions whether the cancellation of the allotment of land is final or it is subject matter of any further litigation.

Keeping in view the aforesaid facts, the order under challenge is set aside. Delay in filing the appeal is condoned subject to payment of costs of ₹10,000/-.

The case is remitted back to the learned First Appellate Court to decide the appeal as well as cross objections on merits after re-appreciating the evidence.

Parties through their counsel are directed to appear before the learned First Appellate Court on 14.01.2019.

In view of the above, the present petition stands disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

18.12.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No