

VIKAS CHANDER
2018.12.18 12:12

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

CR no.4382 of 2016

Date of Decision: 13.12.2018

Dharamjit Saroha

...Petitioner

Vs.

Gurbax Singh through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Amit Kumar Goyal, Advocate for the petitioner.
Mr. K.S. Dhaliwal, Advocate
for respondent No.1 (i) and (ii).

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned appellate court dated 09.11.2015 (Annexure P-4), by which the delay in filing the appeal before that Court, (filed by respondent no.1 herein through his legal representatives), has been condoned.

Learned counsel for the petitioner submits that, as a matter of fact the petitioner, who is respondent no.6 before that Court, was never heard on the question of delay, i.e. whether the delay in filing the appeal should be condoned or not.

He points to the presence recorded of counsel for the parties before that Court, to submit that no counsel is shown present for the applicant-appellant at the time the application seeking condonation of the delay was decided, with counsel for respondent no.5 shown present and with respondents no.1 to 4 already shown to have been proceeded against *ex parte*.

Thus, there is no reference at all to respondent no.6, i.e. the present petitioner.

Thereafter, on 09.12.2015, the following order was recorded by that Court:-

“Today the case was fixed for hearing arguments on the appeal but at this stage, learned counsel for the appellants Shri M.P. Gupta, Advocate has suffered statement to the effect that he does not press this appeal against sale deed no.1502 dated 5.1.1983 in favour of defendant no.6 Dharamjit, hence, he gives up his relief against defendant no.6 Dharamjit son of Raj Kumar. In view of the statement of counsel for the appellants, this appeal against defendant no.6 Dharamjit is hereby dismissed as withdrawn.

At this stage, learned counsel for the appellants further argued that the remaining respondents have not been served, therefore, sometime be given for their service. In this view of the matter, the case is adjourned to 13.01.2016 for summoning of remaining respondents. Appellants side is directed to furnish the correct address within a week so that notice could be issued. Long date is given due to priority of old cases and due to winter vacations.”

Hence, he submits that the appeal against the petitioner had been in fact abandoned by respondent no.1 herein at that stage, but about a month later, i.e. on 13.01.2016, the following order was recorded by the trial court:-

“Today learned counsel for the appellant made statement that he had given up respondent no.5 Surmukh Singh son of Inder Singh represented by Shri M.S. Virk, Advocate instead of respondent no.6 Dharamjeet and he had also given up relief regarding sale deed no.1502 dated 5.1.1983 executed in favour of respondent no.5 Surmukh Singh. A perusal of last zimni order dated 9.12.2015 reveals that on that day, appeal against defendant no.6 namely Dharamjeet was dismissed as withdrawn on the basis of statement given by learned counsel for the appellant but now

he has rectified his that statement, therefore, order dated 9.12.2015 is also rectified in view of the amended statement given today by learned counsel for the appellant. So in view of the statement made by counsel for the appellant, the appeal against defendant no.5 Surmukh Singh is hereby dismissed as withdrawn.

Today Shri R.S. Nain, Advocate has put the appearance on behalf of respondent no.6. Service complete. Now for arguments, to come upon 17.02.2016. Long date is given due to priority of old cases.”

The contention therefore is that the petitioner never having been heard at all by the appellate court, the delay in filing the appeal could not have been condoned.

Notice having been issued in this petition, learned counsel appearing for respondent no.1, i.e. the appellant before the first appellate court, submits that the reasoning given by that court to condone the delay in filing the appeal would be no different even if the petitioner were to be heard, such reasoning being that another suit, also titled as Gurbax Singh v. Baldev Singh, had been pending when the suit in the present case had been decided on 17.03.2012, with that suit having been decided only on 18.07.2012 and consequently, there was ground enough to condone the delay of 4 months in filing the appeal.

Having considered the matter, though learned counsel for the respondent may be correct in what he has submitted, however, no person can be condemned unheard and consequently, this petition is allowed, with the impugned order set aside and the appellate court directed to grant the

petitioner an opportunity to file a reply to the application of respondent no.1 seeking condonation of delay in filing the appeal; and thereafter to hear the petitioner.

In view of the fact that the appeal before the appellate court has remained pending for a while, the petitioner would file a reply to the application seeking condonation of delay within a period of two weeks from today, after which the learned appellate court would hear the parties on that issue and decide the application within a period of one month thereafter.

13.12.2018
vcgarg/dinesh

(Amol Rattan Singh)
Judge

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