

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

Civil Revision No. 5721 of 2017
Date of Decision : 11.07.2018

Krishna Ganeshan.

...Petitioner

Versus

Gurudwara Bhai Jeeta Singh and others.

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present :- Mr. Rajesh Batheja, Advocate
for the petitioner.

B.S. Walia, J (Oral)

1. Prayer in this revision petition under Article 227 of the Constitution of India is for setting aside order dated 06.05.2017- Annexure P-5 passed by the learned Additional Sessions Judge, Moga dismissing the application filed by the petitioner under Section 5 of the Limitation Act, 1963 and consequentially the appeal.

2. Brief facts of the case leading to the filing of the instant revision petition are that a civil suit was filed by Karnail Singh, Gian Singh and Bakhtawar Singh, sons of Naranjan Singh and one Mrs. Karishna Ganeshan wife of K. Ganeshan, resident of Chandigarh against Gurudwara Bhai Jeeta Singh of village Lohara, Tehsil and District Moga, Shiromani Gurudwara Parbandhak Committee (SGPC), Amritsar and two others praying for a declaration that the plaintiffs were owners in possession of land bearing khasra No.49//5/1 (4-0), 6/1/1 (0-5) along with defendant Nos. 2 and 3 of land bearing khasra No. 36//16/2 (4-13), 25 (8-

0), 49//5/2 (4-0), 41//11/3 (1-2), situated in the area of village Lohara, Tehsil and District Moga and that order dated 18.10.2002 of the Collector District Moga affirming the order dated 16.02.2001 of the Sub Divisional Magistrate, Moga exercising the powers of the Assistant Collector, 1st Grade, Moga vide appeal No.4 P.S.L of 17.05.2001 ejecting the plaintiffs from the suit land was void, against law and not binding on the rights of the plaintiffs with a consequential relief of issuance of permanent injunction restraining defendant No.1 from ejecting and dispossessing the plaintiffs out of the above said land on the basis of said orders.

3. The aforementioned suit was dismissed vide judgment and decree dated 27.08.2014. Only one of the four plaintiffs i.e. the petitioner herein filed an appeal against the judgment and decree dated 27.08.2014 along with an application for condonation of 71 days delay in late filing of the appeal. Relevant paragraph of the application i.e. paragraph No. 3 is reproduced as under :-

“3. That the present appeal is beyond limitation as appellant/plaintiff No.4 is resident of Chandigarh and his attorney Gurdeep Singh s/o Amar Singh had fallen ill and so he could not contact his counsel in time. After recovery he could be able to contact his counsel on 21.10.2014 and on that date he got applied for certified copy of the impugned judgment and decree dated 27.08.2014 on 21.10.2014 through his previous counsel and the same was supplied to him on 29.10.2014. Thereafter, the appellant/plaintiff No.4 through his attorney contacted the undersigned counsel and after going through the whole record and after perusal of the lower Court file, the

appellant/plaintiff No.4 is hereby filing the present appeal.”

4. Perusal of the same reveals that present appeal has been filed along with an application contending that appellant/plaintiff No.4 was resident of Chandigarh and her attorney Gurdeep Singh had fallen ill, therefore, he could not contact the counsel and could do so only on 21.10.2014 after recovering and on said date applied for certified copy of the impugned judgment and decree dated 27.08.2014 and the same was supplied on 29.10.2014, thereafter the appeal was filed on 07.11.2014. The application was vehemently opposed by the respondents.

5. The learned lower appellate court dismissed the application by taking into account that judgment and decree was dated 27.08.2014, copy of the judgment and decree were applied for only on 21.10.2014 i.e. 1 $\frac{3}{4}$ months after the passing of the judgment and decree, certified copy was prepared by the Copying Agency on 29.10.2014 and was delivered on 30.10.2014, and the appeal was filed on 07.11.2014. However, there was no documents in support of the attorney of the appellant having fallen ill. It was further observed that merely because the appellant had appointed an attorney to pursue the case did not imply that she was in any manner rendered incapacitated from filing the appeal personally for despite having appointed an attorney to pursue the case, she still could act in her personal capacity and as such merely because the attorney of the appellant had allegedly fallen ill, delay of 71 days in filing the appeal had not been explained satisfactorily.

6. I have considered the submissions of learned counsel for the appellant. The sole ground in support of the plea for condonation of 71 days delay is of the petitioner having appointed the attorney, who had fallen ill. However, no evidence whatsoever was led before the learned Appellate Court in support of the averments that the attorney had fallen ill, the duration of illness and proof in respect thereto so as to enable ascertainment of the genuineness of the plea with regard to sufficient cause for not filing the appeal in time. Besides, merely because the appellant had appointed attorney to pursue the case did not imply that she was rendered incapable or incapacitated from filing the appeal. In the circumstances, the conduct of the petitioner exhibits want of due diligence.

7. In the light of the position as noted above, I do not find any infirmity with the impugned orders passed by the learned lower Appellate Court dismissing the application for condonation of delay, consequently, the appeal. Accordingly, finding the petition bereft of merit, the revision petition is dismissed in limine.

(B.S. Walia)
JUDGE

11.07.2018
Manpreet

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