

(120) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5875 of 2018 (O&M)
Date of decision:16.10.2018

Joginder Singh

.... Petitioner

Versus

Mohinder Singh and others

.... Respondents

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

Present: Mr. Inderjit Sharma, Advocate for the petitioner.

B.S. Walia, J.

[1] Revision petition has been filed challenging order dated 14.08.2018 (Annexure P-6) passed by the learned Additional District Judge, Gurdaspur dismissing application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as 'the Act') for condonation of delay of 3 years 4 months in filing of civil appeal under Section 96 CPC against the judgment and decree dated 24.05.2014 (Annexure P-1).

[2] Brief facts of the case are that the deceased Mohinder Singh, respondent No.1/plaintiff filed civil suit which was decreed on 24.05.2014. It so transpires that an order had been passed in the application under Order 39 Rules 1 & 2 CPC in the civil suit on 10.05.2012. The petitioner who was contesting the suit as defendant through one Sh. P.S. Bedi, Advocate filed miscellaneous appeal which was disposed of as having become infructuous on 19.01.2018. A few months before the dismissal of the miscellaneous

appeal on 19.01.2018 as having become infructuous, the petitioner filed an

appeal along with an application under Section 5 of the Act against the judgment and decree dated 24.05.2014 seeking condonation of delay of 3 years 4 months on the ground that he was illiterate and the counsel who was appearing in the civil suit as well as in the miscellaneous appeal had assured him that appeal had been filed against the judgment and decree dated 24.05.2014.

[3] Learned counsel further contends that in fact the petitioner had been regularly appearing in the proceedings of the miscellaneous appeal also but came to know about the judgment and decree dated 24.05.2014 only on receipt of notice in execution proceedings. As per the impugned order, the petitioner/appellant had instructed his counsel i.e. Sh. P.S. Bedi, Advocate to file an appeal against the judgment dated 24.05.2014 but counsel did not file any appeal for reasons best know to him, that appellant was an illiterate person who did not know the technicalities of law and non-filing of appeal within time and that if the delay in filing the appeal was not condoned and appeal not admitted and decided on merits, then he would suffer an irreparable loss and injury.

Despite query, learned counsel for the petitioner has not been able to disclose the date in which the petitioner received notice in the execution proceedings.

[4] The aforesaid aspect assumes significance in the light of finding recorded in paragraph No.10 of the impugned order in which it is mentioned that the petitioner had knowledge that no appeal had been filed by anyone on his behalf as he had been appearing in execution proceedings. Simply, because the petitioner has taken up the stand that he had directed his counsel Sh. P.S. Bedi, Advocate to file an appeal on his behalf but he had not filed it

rightly noticed in the impugned order that no complaint was made by the petitioner against the counsel whom the petitioner had allegedly instructed to file an appeal and the same went to show that the petitioner had coined a false story in order to make out a case for seeking condonation of delay. That apart it has been mentioned in the impugned order that the petitioner used to appear in Court in the appeal filed by him against the interim orders under Order 39 Rules 1 & 2 CPC. The impugned order further records that the petitioner admitted in his cross-examination that he had appeared in the execution proceedings and further that he had applied for certified copy of judgment dated 24.05.2014 in the year 2014 itself though he claimed to have handed over the same to his counsel after one month and further he also admitted that he had met his counsel after 10 days when he had handed over the certified copy of the judgment. The impugned order further records that once the petitioner had appeared to contest the execution proceedings, it would have been natural on his part to pursue the appeal for which he had asked his counsel to file and was sitting silent over the matter for years together all went to show that he had not filed the appeal intentionally and now was concocting a false story.

[5] Having considered the matter in totality, I am of the considered view that the petitioner has miserably failed to make out sufficient cause for seeking condonation of delay of 3 years 4 months in late filing of the appeal. Admittedly, the petitioner obtained a copy of the judgment and decree dated 24.05.2014 in the year 2014 itself and handed over the same to his counsel for filing of appeal after one month and thereafter, again met his counsel after 10 days. He also admitted having participated in the execution proceedings on receipt of notice. His taking up the stand that he had instructed his counsel to file appeal but the counsel had not filed the same

for reasons best known to him does not inspire confidence for the simple reason that it was incumbent upon the petitioner to have acted with due care and diligence. It is apparent that according to the definition of ‘good faith’ as given in Section 2 (h) of the Act, the application filed by the petitioner is not in good faith. Section 2 (h) of the Act provides that nothing shall be deemed to be done in good faith which is not done with due care and attention.

[6] For the reasons as are recorded above, I am of the considered view that no case whatsoever is made out warranting intervention with the well-reasoned order dated 14.08.2018 (Annexure P-6) passed by the learned Additional District Judge, Gurdaspur.

[7] Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S. Walia)
Judge

16.10.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No