

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

**CR No.939 of 2015 (O&M)
Date of decision : April 30, 2018**

Haryana Country Farm Housing Society and others Petitioners

Versus

Shri Ashok Nath and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.B. Raheja, Advocate for the petitioners.

Mr. Kunal Dawar, Advocate for respondent No.1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 24.09.2014 (Annexure P-1) passed by learned Civil Judge (Sr. Divn.), Faridabad, vide which an application filed under Section 14 of The Limitation Act, 1963 was allowed and the delay in filing the suit was condoned.

Brief facts of the case are that a suit was filed by the plaintiffs-respondents at Delhi High Court for declaration and cancellation of Instrument under Section 31 and 34 of the Specific Relief Act, 1963 and Section 52 of the Transfer of Property Act, 1882. It remained pending there from 30.05.2005 to 09.05.2013. The suit was filed on 30.05.2005. On 26.11.2012, when it was brought to the notice of the Court that the suit should have been filed at Faridabad Courts, the Delhi High Court ordered the return of the plaint under Order VII, Rule 10 CPC, 1908 and at the same time under Order VII, Rule 10A CPC, 1908 fixed the date 17.10.2012 for appearance before the learned District Judge, Faridabad. On the said date,

the plaintiffs-respondents are stated to have not appeared before the said Court. Later on, he filed an application dated 08.03.2013 under Section 151 CPC, 1908 before the Delhi High Court, wherein he stated that the entire file including the plaint, written statement, counter claim, replication, application and documents should have been returned to him for filing before the learned District Judge, Faridabad. Vide order dated 23.04.2013, all the said documents (in original) were ordered to be returned to the plaintiffs-respondents. The said documents were filed before the Faridabad Courts on 09.05.2013. An application under Section 14 of The Limitation Act, 1963 for condoning the delay from 30.05.2005 to 09.05.2013, which was consumed bonafide in prosecuting the suit before the Delhi High Court. Vide impugned order, the said application was allowed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner has argued that once the plaint is ordered to be returned and a date has been fixed, the plaintiffs-respondents should have appeared before the said Court on the date fixed, but they did not appear before the said Court on the date fixed. Therefore, Section 14 of The Limitation Act, 1963 is not attracted in such cases for exclusion of the period consumed before the Delhi High Court.

On the other hand, learned counsel for the respondents has argued that in this case the original plaint was not returned. Therefore, after making efforts in the Registry to return the original plaint, written statement, counter claim, replication, application etc., he had to move to the Delhi High Court on the Judicial side on 08.03.2013. It is contended that it

was not only a plaint but a counter claim was also filed, which was to be tried with the said case. Therefore, the plaintiffs-respondents had to seek return of all the documents from Delhi High Court i.e. plaint, counter claim, written statement, replication, affidavit and documents. When on the judicial side, the order was passed, they immediately, submitted the said pleadings and documents before the Faridabad Courts and put in appearance.

Learned counsel for the petitioners has referred to the authority of Hon'ble Kerala High Court delivered in case of ***“Videocon International Ltd. vs Logos Traders”, 2008(1) Civil Court Cases 112 (Kerala)***, in which it was held that time of appearance under Order VII, Rule 10 CPC, 1908 cannot be extended.

I am of the view that the position in the present case is different. It is not Delhi High Court, has extended the time, but it is the trial Court, which is trying the suit, which has allowed the application filed under Section 14 of The Limitation Act, 1963.

Admittedly, the time from 30.05.2005 to 17.12.2012 was consumed before the Delhi High Court. According to the plaintiffs-respondents, only certified copy of the plaint was given to them and they were seeking the original plaint, written statement, counter claim, replication, affidavit and other documents, therefore, they tried to persuade the Registry of Delhi High Court to return the said documents, which they refused to return. Therefore, they had ultimately, moved to the Delhi High Court on Judicial side.

I am of the view that learned Civil Judge (Sr. Divn.), Faridabad has taken into consideration the case law on the point and has held that

since the time was consumed in return of the original documents by the Delhi High Court, therefore, the same has been excluded.

I am also of the view that it is the discretion of the trial Court, which has been Judiciously exercised. In fact, when a counter claim is filed along with the plaint, it should have also been returned along with the endorsement as required under Order VII, Rule 10 CPC, 1908. In fact, due to confusion, which occurred, only certified copy of the plaint could be obtained by the plaintiffs-respondents and the Registry refused to return the the remaining documents. Therefore, I am of the view that in such circumstances, there is no illegality or infirmity in the exercise of the discretion by the trial Court. There is no ground to interfere in the same.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

April 30, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No