

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

**CM No.14898 of 2018 in/and
CWP No.23624 of 2018
Date of decision: 5.10.2018**

Suraj Bhan

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Lalit Yadav, Advocate for
Mr. Shilak Ram Hooda, Advocate for the applicant-petitioner

G.S.SANDHAWALIA, J. (Oral)

CM No.14898 of 2018

Prayer made in the present Civil Misc. Application for placing on record the judgment and decree dated 31.1.2011 (Annexure P/9) and judgment and decree dated 6.6.2012 (Annexure P/10) is allowed.

Annexures P/9 and P/10 are taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

CWP No.23624 of 2018

Challenge in the present writ petition is to the order dated 18.11.1998 (Annexure P/8) vide which the instrument of partition was prepared by respondent no.4 and in the said proceedings the petitioner was arrayed as respondent no.31. The issue of delay of almost two decades thus stares the petitioner in the face.

Counsel for the petitioner, however, submits that the civil suit was filed on 17.2.2005 which eventually was decided on 31.1.2011

(Annexure P/9) and the appeal was dismissed on 6.6.2012 (Annexure P/10). The Regular Second Appeal No.4169 of 2012 was also dismissed as withdrawn on 26.9.2012. After six years the present petition has thereafter been filed. The right of the petitioner to agitate for his grievances cannot be denied but it cannot be at the costs of other co-sharers since as many as 28 private respondents who have been arrayed as parties to the partition proceedings. Even in the present writ petition no site plan etc. has been placed on record to show that in which manner the petitioner as such has been aggrieved.

The Hon'ble Apex Court in **Pundlik Jalam Patil (D) by LR.s. vs. Exe. Eng. Jalgaon Medium Project and another, 2009 (1) PLR 128** has observed as under on the issue of delay and laches:-

“14.....The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'

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18. Shri Mohta, learned senior counsel relying on the decision of this court in **N. Balakrishnan vs. M. Krishnamurthy** [(1998) 7 SCC 123] submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the

explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the opposite party altogether. It is observed:

It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

Resultantly, keeping in view the above and on account of the delay being not explained in any manner after the decision of the civil proceedings which were also filed after 6 years of the instrument of partition had been prepared, this Court is of the opinion that the present writ petition is liable to be dismissed on the ground of delay and laches itself.

Accordingly, the present writ petition is dismissed in limine.

October 05, 2018

Pka

(G.S.SANDHAWALIA)

Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No