

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.5389 of 2012 (O&M)
Date of Decision.05.12.2018

Haryana Urban Development Authority and othersAppellants

Vs

Inderjeet Kaur and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.D. Bawa, Advocate
for the appellants.

Mr. Vikas Mohan Gupta, Advocate
for the respondents.

Mr. Pankaj Mehta, Advocate
for the applicant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is hanging fire in motion hearing since 2012, accompanied by application seeking condonation of delay of 1948 days. The pith and substance of explanation given in the application of condonation of delay lays focus on the challenge to the judgment and decree of the Courts below instead of explaining the delay. Only in para 13 and 14, attempt has been made to explain the delay, which reads as under:-

“13. That Sh. Yadvinder Singh Dhillon, Advocate vide his letter dated 13.10.2012 informed that no case pertaining to the filing of appeal against the order in Civil Appeal No.76 of 2006 has been received in his office. Therefore, it transpired that no appeal has been

filed against the judgment and decree dated 09.04.2007 passed in Civil Appeal No.76 of 2006.

14. That the Estate Officer, HUDA, Hisar vide his Memo No.ADA-2012/15182 dated 17.10.2012 brought the matter to the notice of the Chief Administrator, HUDA, Panchkula and therefore, a decision has been taken to engage a new counsel for filing the RSA and accordingly vide Memo No.ADA/2012/2432 dated 5.11.2012 Sh. Dharam Vir Sharma, Senior Advocate was required to file the RSA.”

The respondent-plaintiff instituted the suit claiming 2/5th and 3/5th share with the pro forma defendants over the land measuring 3 kanals 16 marlas and qua prohibitory injunction from restraining the demolition of the shop. The trial court dismissed the suit, however, in appeal taken before the lower Appellate Court by referring to the revenue record, suit has been decreed.

The plea of the appellant with regard to acquisition of land as per the notification promulgated under Sections 4 and 6 of Land Acquisition Act, 1894 in the year 1956 and 1957, much less, award of 1959, khasra numbers referred to therein did not reflect khasra numbers in dispute.

Notice in the application for condonation of delay was issued on 20.02.2013 and thereafter on few dates, learned counsel appearing on behalf of the appellants was not present and on 05.10.2015, the appeal was dismissed for default.

On 15.07.2016, the appeal was restored and the matter

was listed for arguments on 30.09.2016.

Learned counsel for the appellants sought adjournment, thereafter no arguments have been addressed and the matter is being adjourned from time to time.

Today again an request has been made, which is declined.

The application under Order 1 Rule 10 CPC has been filed for impleadment of Shiv Charan as respondent in the aforementioned regular second appeal on the premise that during the pendency of the suit filed by the respondent, application under Order 1 Rule 10 CPC was filed which was dismissed. Though the applicant had already filed the separate suit, which was decreed, however, the appeal is pending. No sufficient ground is made out for impleadment, thus, the same is hereby dismissed.

In view of the aforementioned fact, I am of the view that delay does not conform to the ratio decidendi culled out in para 29 of the judgment of Hon'ble Supreme Court in **Office of the Chief Post Master General and others Vs. Living Media India Ltd. and another (2012) 3 SCC 563**, which reads as under:-

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the

process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

A person cannot be permitted to perpetuate the illegality by not taking action in time. The explanation given in the application as notice above, is lacking the parameters i.e. reasonable cause and bona fide.

The appeal is dismissed on the ground of delay only.

(AMIT RAWAL)
JUDGE

December 05, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No