

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

-.-

RSA 1079 of 2016 (O&M)
Date of decision: 13.07.2018

Sher Singh

..... Appellant

Versus

Surinder Singh and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. RPS Ahluwalia, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

CM 2939 C of 2016

Prayer in this application is for condonation of delay of 6 days
in re-filing the appeal.

In view of averments made in the application supported by an
affidavit of the applicant/appellant, the application is allowed and delay of
06 days in re-filing the appeal stands condoned.

CM 2940 C of 2016

Prayer in this application is for condonation of delay of 13 days
in filing the appeal.

In view of averments made in the application and arguments
advanced, the application is allowed and delay of 13 days in filing the
appeal stands condoned.

Main case

The present appeal directs challenge against concurrent

findings recorded by the Courts whereby suit for mandatory injunction directing the respondents/defendants to return the trees cut from the land of the appellant/plaintiff or in the alternative to refund the amount of trees, was dismissed by the trial Court vide judgment and decree dated 17.09.2013, that came to be affirmed by the Appellate Court.

The trial Court in the concluding lines of para 12 has held, quoted thus:-

“12. Now coming to the case in hand, it is the case of the plaintiff that in September 2001, an oral agreement regarding the cutting of trees was entered into between him and the defendant No. 1 and 2. After defendant No. 1 and 2 had refused to pay money, on 25.07.2002, defendant No. 3 executed a writing assuring the plaintiff that he would pay money to him. During evidence, PW3 Hukam Singh has deposed that as per his information, the woods were sold in the year 2002. PW4 Hissam Singh has also deposed that the alleged agreement was executed in the year 2001. The plaintiff has also deposed that in relation to the present dispute, in the year 2002, he filed a criminal case against the defendants. Demolishing his own case, he has also deposed that February 2002, was the last time when the defendants refused to pay money to him. From the perusal of the file it spells out that the plaintiff has filed the present suit on 05.08.2006 i.e. after more than four years from the date, when the defendants refused to pay money to the plaintiff. From this, it becomes crystal clear that the present suit is time barred.”

Counsel for the appellant is not in a position to advance any

meaningful arguments to assail findings of the Court that suit for mandatory injunction is barred by limitation. This apart, if the respondents/defendants failed to pay price of the trees allegedly cut from the land of the appellant/plaintiff, the plaintiff, at best, could file a suit for recovery on payment of requisite Court fee and that too within the prescribed period of limitation. In this view of the matter, there is no ground to interfere in the well reasoned findings recorded by the Courts consistently rejecting claim of the appellant/plaintiff.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

13.07.2018
mohan bimbira

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