

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

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RSA 3282 of 2016 (O&M)
Date of decision: 16.10.2018

Harpinder Singh through LRs *Appellant*
Versus
Dr. Kirpal Singh (now deceased) through LRs and others *Respondents*

***Coram:* Hon'ble Mrs. Justice Rekha Mittal**

Present : Mr. Kulwant Singh, Advocate
for the applicant/appellant

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Rekha Mittal, J. (Oral)

CM 16021 C of 2018

Prayer in this application is for impleading legal representatives of applicant - Harpinder Singh (since deceased).

In view of averments made in the application supported by an affidavit, the application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as legal representatives of applicant/appellant Harpinder Singh (since deceased) for the purpose of present lis, subject to just exceptions.

Amended memo of parties is taken on record.

Main case

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the respondents/plaintiffs for declaration by assailing judgment and decree

dated 20.07.1991 passed in civil suit No. 479/1991 titled '*Harpinder Singh vs Kirpal Singh and others*' in respect of suit house and further challenge to sale deed dated 27.07.1999 executed by appellant/defendant No. 1 in favour of defendant No. 2 was decreed by the trial Court vide judgment and decree dated 31.10.2006 that came to be affirmed in appeal preferred by the appellant and his co-defendant - Pardeep Kumar Mehta. Along with the appeal, an application has been filed for condoning delay of 1970 days in filing the appeal.

Counsel for the applicant/appellant has submitted that the delay in filing the appeal is neither intentional nor *mala fide*. Hon'ble the Supreme Court of India in ***Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649***, has culled out certain principles applicable to an application for condonation of delay wherein it has been held that there should be liberal, non-pedantic and pragmatic approach while dealing with question of condonation of delay in filing the appeal as the Courts are not supposed to legalize injustice but are obliged to remove injustice.

I have heard counsel for the applicant/appellant and perused application seeking condonation of delay of 1970 days in filing the appeal supported by an affidavit of applicant Harpinder Singh.

A relevant extract from paras 7 to 10 of the application reads as follows:-

“7. That aggrieved by the judgement and decree dated 31.10.2006, the appellant filed an appeal before the learned Additional District Judge, Karnal. The learned lower appellate Court upheld the order of the trial Court

and dismissed vide judgement and decree dated 03.02.2010. Hence, this present appeal.

8. *That the respondents have also got registered an FIR No. 584 dated 15.10.2001 under Sections 418, 420 and 423 IPC, Police Station City Karnal against the present petitioner and the respondents were pressurizing the present petitioner by way of filing the various cases before the Criminal Courts. Moreover, one of the applications under Section 311 CrPC was also filed by the respondents, which was dismissed by the learned JMIC on 14.01.2013. Ultimately, the respondents also approached this Hon'ble Court by way of filing CRR No. 481 of 2013 and the above revision petition was allowed by this Hon'ble Court vide order dated 21.07.2014.*

9. *That after passing of the order dated 21.07.2014, the appellant was contesting the criminal case before the Courts below and he was mentally upset due to filing the numerous criminal cases by the respondents. Moreover, unfortunately, the appellant was also under shock due to untimely demise of his wife.*

10. *That it is significant to mention here that the wife of the present appellant was suffering from chronic of cancer and the appellant has taken the loan from his friend circles and he was not any fund for engaging the counsel for filing the present appeal. Thus, the delay in filing the present appeal has occurred due to the above facts and circumstances."*

When the case is examined in the light of judgement of this Court ***Vijay Kumar and others vs Om Parkash and others (RSA 2042 of 2012, decided on 09.05.2016)***, it can safely be held that the applicant/appellant has failed to make out a case that there is sufficient cause for delay in filing the appeal much less justifiable reason to condone a

colossal delay of 1970 days in filing the appeal. I would hasten to add that this Court is not oblivious of the fact that the Court is required to adopt a liberal and pragmatic approach while dealing with question of delay in filing the appeal. However, when the case is examined in the light of judgement of Hon'ble the Apex Court ***Ram Lal and others vs. Rewa Coalfields Limited, AIR 1962 SC 361*** relied upon by this Court in Vijay Kumar's case (supra), I find no reason to allow indulgence of this Court to a litigant who was neither vigilant nor diligent in pursuing his remedy and has sought to raise stale claim after a period of more than four years. In this view of the matter, application filed by the applicant/appellant for condoning inordinate delay of 1970 days in filing the appeal is liable to be dismissed and ordered accordingly.

As application for condoning delay in filing the appeal is dismissed, as a natural corollary, the appeal is dismissed being barred by limitation. In view of the above, application for condoning delay of 86 days in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

16.10.2018
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