

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

(1) RSA No.5198 of 2016 (O&M)
Decided on:-January 18, 2018.

Tejinder Singh and others

.....Appellants.

Versus

Harmeet Singh.

.....Respondent.

(2) RSA No.5201 of 2016 (O&M)
Decided on:-January 18, 2018.

Tejinder Singh.

.....Appellant.

Versus

Harmeet Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Mandeep K. Dhot, Advocate
for the appellants.

HARI PAL VERMA, J.

This order shall dispose of aforementioned two regular second appeals filed by the appellant-defendants against the judgment and decree dated 15.02.2014 passed by learned Additional District Judge, Tarn Taran, whereby the appeal filed by respondent-plaintiff Harmeet Singh against the judgment and decree dated 23.03.2013 passed by learned Additional Civil

Judge (Senior Division), Tarn Taran, was allowed, but the appeal filed by appellant-defendants Tejinder Singh and others, was dismissed.

However, for convenience and clarity, detailed order is being passed in ***RSA No.5198 of 2016*** titled as ***Tejinder Singh and others Versus Harmeet Singh***.

Briefly stated, respondent-plaintiffs Harmeet Singh, Charanjit Singh and Ninderpal filed a suit for permanent injunction for restraining the appellant-defendants, namely, Tejinder Singh, Balwinder Singh, Baldev Singh and Dharam Singh from constructing the projection in common street as shown in red colour in the site plan Mark-A to Mark-B on the shop of the defendants on the ground that the same shall disturb the rights of enjoyment of the plaintiffs in common street. Further, relief of mandatory injunction was also prayed to remove the projection Mark-C to Mark-D, which could have disturbed the enjoyment of plaintiffs No.1 and 2 and their family members.

Vide impugned judgment and decree dated 23.03.2013, learned civil Court had partly decreed the suit of the respondent-plaintiffs for permanent injunction and accordingly, restraining the defendants from constructing the projection Mark-A to Mark-B in the common street, but declined the relief of mandatory injunction to the plaintiffs.

Feeling aggrieved, respondent-plaintiff Harmeet Singh filed an appeal before the lower appellate Court. Similarly, appellant-defendant Tejinder Singh also filed a cross-appeal against the judgment and decree dated 23.03.2013 passed by the civil Court.

Vide common judgment and decree dated 15.02.2014, the appeal filed by plaintiff Harmeet Singh was allowed, whereas the appeal filed by appellant-defendant Tejinder Singh was dismissed by learned lower appellate Court.

It is in these circumstances, the present regular second appeals, i.e. RSA No.5198 of 2016 by appellant-defendants Tejinder Singh and others and RSA No.5201 of 2016 by appellant-defendant Tejinder Singh, have been filed.

Since both the regular second appeals preferred by the appellant-defendants are barred by limitation, applications under Section 5 of the Limitation Act, 1963 read with Section 151 CPC seeking condonation of delay of 867 days in filing the appeals, have been filed along with the respective appeals.

Learned counsel for the appellant-defendants has contended that the appellants were not in the knowledge of the impugned judgment and decree dated 15.02.2014 passed by learned lower appellate Court, whereby the appeals against the impugned judgment and decree dated 23.03.2013 passed by the civil Court, were decided. When the appellants contacted their counsel regarding the case, he always informed them that the same is pending for 2015 and the counsel informed the appellants that the appeal filed by the respondent-plaintiffs has been allowed, whereas the appeal filed by the appellant-defendants has been dismissed. Thereafter, the appellant-defendants gave their power of attorneys to their counsel at lower appellate Court to file a regular second appeal before this Court on his asking. As and when the

appellants contacted their counsel at lower appellate Court, he always informed them that the appeal has already been filed before this Court.

Learned counsel for the appellants has further contended that in the meantime, the respondent-plaintiffs filed the execution application. It is only when the summons were received by the appellant-defendants from the executing Court, the appellants again contacted their counsel at lower appellate Court to enquire about the status of the regular second appeal. The counsel at lower appellate Court made an excuse that due to some personal difficulty of the advocate in the High Court, the regular second appeal has not been filed. Accordingly, the appellants had collected all the papers from him and engaged another counsel. However, when the appellants enquired about the name of the counsel in this Court, no name and contact number of such advocate was given by the counsel at lower appellate Court. The appellants received all the documents from their counsel at the lower appellate Court so as to file the present regular second appeals.

He has further contended that the documents were received by the appellants on 06.08.2016 and on 31.08.2016 and after receiving the copies of impugned judgment and decree dated 15.02.2014 passed by the lower appellate Court, the appellants engaged a counsel to file the present regular second appeals. Hence, the delay is not intentional and it is only because of the aforesaid circumstances, the present appeals could not be preferred within the prescribed period of limitation.

I have heard learned counsel for the appellant-defendants and perused the record.

The record reveals that learned lower appellate Court had dismissed the appeals vide impugned judgment and decree dated 15.02.2014, whereas the present regular second appeals were filed by the appellant-defendants on 28.09.2016. A bare perusal of the certified copies of the impugned judgment and decree dated 15.02.2014 passed by the lower appellate Court shows that it is only on 01.08.2016, the appellants had applied for the same, which were delivered on 06.08.2016. The appellants have not mentioned the date on which they were informed by their counsel regarding the decision of the lower appellate Court. The applications nowhere suggest the date, when the summons were received by the appellants from the executing Court.

In ***Basawaraj and another Versus Special Land Acquisition Officer 2014(1) RCR (Civil) 603***, the Apex Court has held that the applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished by the applicant, the Court should not allow the application for condonation of delay. The Court has to examine as to whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose.

The present applications for condonation of delay of 867 days in filing the regular second appeals are totally evasive as the appellants have failed to establish sufficient cause so as to condone the delay. No plausible reason has been given by the appellants to explain the inordinate delay of 867 days in filing the present regular second appeals. Therefore, this Court finds

that no ground for condonation of delay in filing the instant appeals is made out.

Accordingly, the present regular second appeals are dismissed on the ground of limitation alone.

Photocopy of this order be placed on the file of other connected case.

January 18, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No