

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

RSA No.3266 of 2017 (O&M)

Date of decision:29.08.2018

Asharfi Devi (since deceased) through LRs ... Appellant

Vs.

Poorni Devi ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vivek Suri, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the the concurrent findings of facts and law regarding claim of the relief of mandatory and permanent injunction directing the defendant to hand over the possession of the licensed premises bearing House Tax No.639/ML situated at lower Bazaar, Kalka, Panchkula (hereinafter referred to as “suit property”) and to pay the damages and mesne profits for unauthorized use and occupation charges of suit property.

The suit aforementioned was filed on the premise that Asharfi Devi (since deceased through LRs) was the daughter of Chaman Lal and Dropati Devi. Both plaintiff and defendant were related to each other and was given the possession of the suit property. On revocation of the license, possession of the defendant became unauthorized. The defendant was proceeded against ex parte as she did not appear.

The plaintiff placed on record the documentary evidence, i.e., Ex.P1 to Ex.P10 including the unattested copy of the Will and various other documents. The trial Court on preponderance of evidence dismissed the suit and so did the Lower Appellate Court.

Mr. Vivek Suri, learned counsel appearing on behalf of the appellant-plaintiff submitted that against the judgment and decree of the trial Court, the review application was submitted which was dismissed. The impugned order dismissing the review application was assailed before this Court by filing a revision petition which was also dismissed. In this process, time for filing the appeal had elapsed. Alongwith an appeal, an application under Section 14 of Limitation Act seeking condonation of delay was filed but the same has also been dismissed. The delay was neither intentional nor willful but owing to the remedy availed and thus, urged this Court for remitting the matter to the Lower Appellate Court for deciding the appeal on merits.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Suri, for, filing of the review petition and challenging the order in revision is not a legal remedy as the statutory remedy provided under Section 96 of Code of Civil Procedure is available to the litigant aggrieved of the judgment and decree.

In such circumstances, I am of the view that the trial Court has rightly dismissed the review application as the plaintiff did not avail the

remedy of appeal intentionally as indicated above.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No