

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

RA-RS-28-C of 2015 in

RSA No.3243 of 2011(O&M)

Om Parkash Khanduja Vs. HUDA and others

Present: Mr. Arun Luthra, Advocate for the applicant-appellant.

REKHA MITTAL, J.

CM No.3428-C of 2018

Heard.

Allowed as prayed for.

Grounds taken in the Special Leave Petition No.193 of 2015 titled Om Parkash Khanduja Vs. HUDA and others in compliance of order dated 3.11.2017 are taken on record subject to just exceptions.

Disposed of accordingly.

RA-RS-28-C of 2015

Prayer in this application filed under Order 47 Rule 1 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 (in short 'CPC') is for review of the judgment dated 26.08.2014 passed in RSA No.3243 of 2011.

Counsel for the applicant-appellant would argue that the applicant filed the aforesaid Regular Second Appeal against the judgment and decree dated 15.06.2011 passed by learned Additional District Judge, Kaithal, reversing the judgment and decree dated 15.05.2009 passed by the Civil Judge (Senior Division), Kaithal in Civil Suit No.155 of 2005. The suit was filed by the applicant-appellant for mandatory injunction directing

the respondent to deliver free-hold residential plot of 500 square yards in Sector 19(2) or 19(3) of HUDA in Kaithal at the allotment rate of 1992 being son of Mansa Ram, owner in possession of land measuring 28 kanal 14 marlas, acquired by the respondent under the Land Acquisition Act, 1894 for development of urban estate Kaithal in the year 1992. The Regular Second Appeal filed by the applicant-appellant was disposed of by this Court on 26.08.2014 in view of statements made by counsel for the parties. It is argued that case of the applicant-appellant is not covered by the judgment dated 25.04.2012 passed in LPA No.2096 of 2011 and other connected appeals referred to in the order dated 26.08.2014, therefore, order dated 26.08.2014 disposing of the appeal is liable to be recalled for decision of the same on merits.

I have heard counsel for the applicant-appellant perused the averments made in the application for review as well as the grounds of appeal raised in Special Leave Petition No.193 of 2015 filed against judgment / order dated 26.08.2014 passed in RSA No.3243 of 2011. The Special Leave Petition came up for hearing before Hon'ble the Supreme Court on 16.01.2015 and the same was dismissed as withdrawn with liberty to file appropriate review petition before the High Court.

Perusal of the grounds of appeal raised in Special Leave Petition filed before the Apex Court would make it evident that no such plea was raised by the applicant that controversy raised in Regular Second Appeal before the Court is not covered by the judgment passed by the Division Bench of this Court in LPA No.2096 of 2011 and other connected appeals decided on 25.04.2012 and has been so confirmed by counsel for

the applicant after going through the grounds of appeal to challenge the order dated 26.08.2014 passed by this Court.

In the application for review, applicant has raised averments in para 19 sub paras (i) to (iv) as to the circumstances under which the order dated 26.08.2014 is liable to be recalled.

Before advertng to the contentions raised in para 19 of the application, it is pertinent to reproduce order dated 26.08.2014 passed in Regular Second Appeal, quoted thus:-

“Counsel for the appellant and respondent are ad idem that the controversy raised in the present appeal is squarely covered by the judgment passed by a Division Bench of this Court in LPA No. 2096 of 2011 and other connected appeals decided on 25.4.2012 and the Special Leave Petitions to Appeal against the said decision have been dismissed by the Hon'ble Supreme Court of India.

In view of the above, the appeal filed by the appellant stands disposed of.

No order as to costs.”

In sub para (i) of para 19, it has been averred to the following effect:-

“Because the order dated 26.08.2014 passed by this Court in RSA No.3243 of 2011 was passed by this Hon'ble Court on the statement of the counsel for the appellant as also that of respondents that the matter involved in RSA was covered by the judgment dated 25.4.2012 passed in LPA No.2096 of 2011 and connected cases was made erroneously on the subject matter of the RSA was not covered by the decision in the said LPA and the connected cases thus in passing the order dated 26.8.2014 in RSA No.3243 of 2011 an error apparent on the face of record has been committed.”

The other sub paras pertain to the consequence in case the order is not recalled. Perusal of sub para (i) of para 19 makes it evident that it does not make reference as to why and how the matter decided in LPA No.2096 of 2011 and connected cases does not cover the matter in controversy raised in RSA No.3243 of 2011. Counsel has not even placed on record the judgment passed in those matters nor extracted its relevant portion in the application to satisfy this Court that a case is made out for review of order dated 26.08.2014. The applicant/appellant, despite getting the appeal disposed of on the basis of statement made by his counsel, had sought to challenge the decision dated 26.08.2014 by raising allegations of error committed by the Court. It is none of the plea that statement made by counsel is either the result of mistake on his part or the controversy raised in the Regular Second Appeal is not covered by the decision in the aforesaid LPA and connected appeals. In this view of the matter, finding no merit, the application is dismissed. As the application for review has been decided on merits, application for condonation of delay of 148 days is of academic relevance only.

APRIL 23, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no