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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A No. 6312 of 2017 (O&M)
Date of Decision:- 01.11.2018

Nasib Singh (D) through LRs ....Appellants

Versus

State of Punjab & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Arun Takhi, Advocate, for the appellant.

AMIT RAWAL J. (Oral)

C.M No. 16439-C of 2017

For the reasons mentioned in the application, delay of 15 days in re-filing the present appeal is condoned.

C.M stands disposed of.

RSA No. 6312 of 2017

Appellants-plaintiff have not been sucessful in claiming the relief of mandatory injunction and possession in respect of the suit property on the basis of the allotment letter dated 14.08.1974. It was alleged that despite having been allotted the defendants did not hand over the possession except symbolic possession vide rapat Roznamcha No. 509 dated 14.08.1974. Defendant Nos. 4 to 6 were arrayed as some right was created prior to the allotment. The Trial Court dismissed the suit and the appeal filed before the lower appellate Court also met with the same fate.

Mr. Arun Takhi, learned counsel appearing for the appellants submitted that respondent Nos. 4 to 6 who were alloted the same very property prior in time had assailed the action of the State in this Court vide C.W.P No. 4472 of 1974 wherein the impugned order was set aside and the

matter was remitted but on remand the authorities again rejected the claim. Another writ petition bearing No.14297 of 1979 was filed and there was interim stay, which was ultimately allowed vide order dated 05.11.1985. Court below ought to appreciated case of allotment but erroneously dismissed the suit on the ground of non-maintainability, for, defendant Nos. 4 to 6 did not take possession, therefore, there illegality and perversity.

On perusal of the judgment and decree of the Courts below I am affraid that the views expressed are perfectly legal and justified. If at all right of the plaintiffs had already been determined they could have either moved an application or initiated indpendent proceedings for an alternative land, which was also maintainable, as the order dated 05.11.1985 was at their back. Though it was duty of the department to apprise this Court, regarding the subsequent allotment in favour of appellant-plaintiffs, Be that as it may, independent suit was filed in view of the fact that the order of allotment in favour of defendant Nos. 4 to 6 subsisted and thus would relate back to the original allotment, therefore, subsequent allotment in favour of the plaintiff of the same piece of land and further relief of possession could not have been granted.

Faced with this situation, learned counsel for the appelant seeks liberty of this Court to take the remedy by explaining the delay as per the parameters of Section 14 of the Limitation Act.

In view of the observation made above, appeal is permitted to be withdrawn.

November 01, 2018 **(AMIT RAWAL)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No