

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

SAO NO.84 of 2018 (O&M)

Date of Decision: September 17, 2018

Swaran Singh

...Appellant

Versus

Baldev Raj

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.R.S.Sekhon, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

The present SAO has been filed impugning the order dated 19.7.2018 passed by the Additional District Judge, Ferozepur, whereby, the application under Section 5 of the Limitation Act for condonation of delay in filing the appeal by the appellant, has been dismissed and consequently, the main appeal has also been dismissed.

The plaintiff - respondent filed a civil suit for specific performance against the defendant – appellant. The case set up by the plaintiff was that the defendant was owner of 3 Marlas 3 Sarsai house and he had entered into an agreement to sell dated 19.12.2011 for sale of the same to the plaintiff alongwith land, roof, malba, passage, doors, windows, ventilators, etc. for total sale consideration of Rs.2,40,000/- The defendant received Rs.1,08,000/- as earnest money and signed the agreement to sell in the presence of the marginal witnesses. The date fixed for execution of the sale-deed was 19.5.2012. It was, by mutual consent, extended to 4.6.2012. However, the defendant did not sign the writing for extension of the date. As 19.5.2012 and 20.12.2012 were holiday, the plaintiff

remaining sale consideration and other expenses, but the defendant did not turn up to get the sale-deed registered. Hence, the suit.

As the defendant did not appear to defend the civil suit despite notice, he was proceeded against exparte. However, he put in appearance on 21.3.2014 through counsel and filed an application for setting aside the order to proceed exparte against him. The said application was allowed and the case was fixed for filing written statement, but thereafter, once again, the defendant did not appear and was proceeded against exparte. Thereafter, the plaintiff led evidence. Based on the same, the Ld.Trial Court concluded that the execution of the agreement to sell in favour of the plaintiff was duly proved by examining one attesting witness PW1 Gurjinder Singh Attesting witness, PW3 Madan Lal Wadhawan Stamp Vendor, who deposed that stamp papers had been purchased by the defendant from him and PW5 Advocate Pankaj Ahuja, who deposed that the agreement to sell was entered in favour of the plaintiff after receipt of Rs.1,08,000/- by the defendant and was signed in his presence and of the attesting witnesses. PW4 Manohar Lal, Receipt Clerk from the office of Sub-Registrar, Ferozepur proved the application Ex.P4 moved by the plaintiff before the Sub-Registrar. As the agreement to sell and the receipt of earnest money were duly proved, the suit of the plaintiff was decreed vide judgment and decree dated 6.7.2015.

The defendant – appellant filed an appeal against the aforesaid judgment and decree on 15.3.2018 along with an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal, which has been dismissed by the impugned order.

In the application, it had been stated that the delay in filing the appeal was unintentional. After the defendant had been proceeded against exparte in the year 2014, he had engaged a counsel for filing an application for setting aside the order. His counsel assured him that he would file the application and would call

him as and when required. However, the counsel did not inform him and the defendant came to know about the exparte judgment and decree against him only in April, 2017 when he received a notice in the execution application. Thereafter, he applied for a certified copy of the impugned judgment and decree, which was received by him on 19.2.2018 and immediately, thereafter, he filed appeal by engaging a counsel.

Ld. Lower Appellate Court held that the appellant had not been able to show any sufficient cause to explain the delay of more than two years and eight months in filing the appeal. Merely by stating that he had engaged a counsel in the year 2014, who had assured him that he (appellant) would be informed about the proceedings, but he did not, does not suggest that the appellant has been vigilant in pursuing the case.

Ld. Counsel for the appellant has stated that the house in question is his only residential house. If that be the case, the appellant ought to have been more vigilant, but as per the case set up by him, he had not even contacted his counsel for about three years. This conduct is inexplicable, especially, as he had earlier also been proceeded against exparte. The appellant has not been able to satisfactorily explain the delay. Accordingly, the Ld. Lower Appellate Court rightly dismissed the application for condonation of delay and consequently the appeal.

I see no ground to differ from the view of the Ld. Lower Appellate Court.

Appeal dismissed.

September 17, 2018

gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

