

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-11700-11702-CI-2018 in/and  
RA-RF-RF-190-CI-2018 in  
RFA No.1306 of 2018  
Decided on : 07.12.2018

Raghvir & others ... Appellants  
Versus  
State of Haryana & others ... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present: Mr. Abhilash Attri, Advocate,  
for the applicant/review-appellants.

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**G.S.SANDHAWALIA, J.** (Oral)

By way of filing the present review petition, an attempt has been made to re-argue the appeal by a counsel who was not the original counsel for the appellants. Even the order dated 03.07.2018 was passed in the open Court and even the present review petition has been filed after a delay of 76 days. Application has also been filed for bringing on record the legal representatives of appellant No.2, who is stated to have expired on 30.01.2015 and even during his life-time, he chose not to file any appeal and the legal representatives have, now, sought to come on record, to further agitate the cause.

The Apex Court in *T.N. Electricity Board and another vs. N. Raju Reddiar and another, 1997 (9) SCC 736* has held that review applications are not to be entertained if filed by the counsel who was not the original counsel. The relevant observations read thus:-

“When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to note that Court spends valuable time in deciding a

case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670/96 in CA No.1867/92, A Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-record when the appeal was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition".

2. Once the petition for review is dismissed, no application for clarification should be filed, much less

with the change of the advocate-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy hand for purity of administration of law and salutary and healthy practice.

3. The application is dismissed with exemplary costs of Rs.20,000/- as it is an abuse of the process of court in derogation of healthy practice. The amount should be paid to the Supreme Court Legal Aid Services Committee within four months from today. If the amount is not paid, it should be recovered treating this direction as decree of the Court by the Supreme Court Legal Services Committee. The Registry is directed to communicate this order to the Supreme Court Legal Service Committee.

Application dismissed”.

Even otherwise, the order which has been sought to be reviewed dated 03.07.2018, noted in detail in all counts, the lack of diligence on behalf of the appellants, who even failed to lead any evidence before the Reference Court. The Full Bench in **Anand Parkash Vs. Bharat Bhushan Rai 1981 P&H 269** has held that if the costs under Section 35-B of CPC are not paid, the Court has but to strike off the defence. Merely because other landowners were diligent in prosecuting their reference petitions and their appeals are pending before this Court, would not be a ground, as such, to re-open the case on account of the lapse of the appellants.

As noticed, the appeal was filed after a period of almost 8 years and has been dismissed on account of limitation, vide the main order. The Apex Court in **Brijesh Kumar Vs. State of Haryana AIR 2014 SC 1612** has held that though the law of limitation might operate

harshly but the legal remedy can be kept alive for legislatively fixed period of time and it is to be applied with rigor when the statute so provides. Relevant portions of the judgment read as under:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of [Section 5](#) of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

Accordingly, no case is made out to entertain the present review petition and the same is hereby dismissed along with the CM applications.

**December 7<sup>th</sup>, 2018**  
*s/ sailesh*

**(G.S.SANDHAWALIA)**  
**JUDGE**

*Whether speaking/reasoned:* *Yes/No*

*Whether Reportable:* *Yes/No*