

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 218

CR-7503-2017 (O&M)

Date of decision : 17.10.2019

Ram Singh

..... Petitioner

VERSUS

Haryana State and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Nafeesh Ahmed, Advocate, for the petitioner.

Mr. Indresh Goel, Addl. A. G., Haryana.

Mr. R. S. Sharma, Advocate, for respondent No. 3.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 03.10.2017, passed by the Additional District Judge-I, Fatehabad (for short, the Appellate Court), through which the petitioner's appeal filed by him against the dismissal of his suit by the Trial Court has been dismissed on the ground of delay.

The petitioner's suit for permanent injunction was dismissed by the Trial Court on 15.03.2016. Such dismissal was challenged by the petitioner by way of an appeal. Since the appeal was 103 days beyond the prescribed period of limitation, an application was filed by him under Section 5 of the Limitation Act, 1963 for condonation of the delay on the ground of his illiteracy and miscommunication between him and his counsel appearing for him before the Trial Court. The Appellate Court dismissed the petitioner's application and consequently his appeal as the Court found the explanation given by the petitioner for the delay in the filing of his appeal to be unsatisfactory. Such order of the Appellate Court is under challenge in the present proceedings.

Learned counsel for the petitioner submits that the delay of 103 days

was caused in the filing of his appeal for the reason that the petitioner is illiterate and that the dismissal of his suit was not informed to him by his counsel. When he received notice from respondent No. 3-Gram Panchayat under Sections 24(1) and 24(2) of the Haryana Panchayati Raj Act, 1994 he made inquiries and came to know about the dismissal of his suit. Immediately, he engaged a new counsel and filed his appeal. It was submitted that the delay was unintentional and that the petitioner would gain nothing in filing of a belated appeal.

Learned counsel appearing for contesting respondent No.3-Gram Panchayat submitted that the petitioner had no case on merits as the Civil Court has no jurisdiction to entertain the petitioner's suit. Consequently, his appeal also would be a futile exercise and wastage of Court's time.

There is a delay of 103 days in filing of the petitioner's appeal against the dismissal of his suit by the Trial Court. Admittedly, no benefit has been derived by the petitioner by filing the appeal belatedly. Therefore, the delay in filing of his appeal is considered to be bonafide.

In the light of the above, after considering the explanation given by the petitioner for the delay in the filing of his appeal as also for the reason that all that the petitioner seeks is to avail his statutory remedy of appeal and a decision thereupon on its merits, subject to payment of ₹5,000/- as costs to be paid by the petitioner to respondent No. 3-Gram Panchayat, the impugned order is set aside and the Appellate Court is directed to adjudicate upon the petitioner's appeal on its merits.

The arguments raised by learned counsel for respondent No. 3 that Civil Court has no jurisdiction to decide the petitioner's appeal is left to the Appellate Court to decide.

The Appellate Court is directed to decide the petitioner's appeal within six months from the receipt of copy of this order.

The Trial Court shall ensure that the costs ordered to be paid by the petitioner to respondent No.3 are transferred to respondent No.3's bank account.

17.10.2019

shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No