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

**RSA No.1828 of 2019 (O&M)
Date of Decision: 09.04.2019**

**HARYANA URBAN DEVELOPMENT AUTHORITY (now HSVP)
& ANR**Appellants

Vs

ASHOK BHATIARespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Arvind Seth, Advocate
for the appellants.

Mr. Sourabh Goel, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. This Regular Second Appeal has been preferred against the judgments and decrees passed by the Courts below in a suit for declaration with consequential relief of permanent injunction. Along with the appeal, an application for condonation of delay of 1509 days in filing the present appeal has also been filed.

[2]. This is a classic case of pathetic approach adopted by the appellants to circumvent the remedy of the respondent arising out of order dated 09.08.2018 passed in **CWP No.19290 of 2018** titled '**Ashok Bhatia vs. Haryana Shehri Vikas**

Pradhikaran & Anr.

[3]. Brief facts are that the respondent filed a suit for declaration with consequential relief of permanent injunction to the effect that the notice bearing memo No.6392 dated 29.10.2002 issued by defendant No.1 was illegal, null and void. Defendants were also sought to be restrained from dispossessing the plaintiff forcibly from SCF No.29, Sector 4, Urban Estate, Gurgaon. The SCF in question was allotted to the plaintiff on 23.08.1996 as per terms and conditions of the allotment letter subject to provisions of HUDA Act, 1977. Plaintiff had deposited 25% of the total tentative price of the SCF in question.

[4]. The suit was decreed vide judgment and decree dated 10.10.2008 thereby declaring the letter/memo dated 29.10.2002 to be illegal. Defendants were restrained from illegally and forcibly dispossessing the plaintiff. The plaintiff was directed to pay interest upon remaining 75% of the amount @ 10% per annum from 01.12.1997 i.e. the date on which the development work was completed by the defendants and the plaintiff was given possession thereof. In the event of failure on the part of the plaintiff, defendants were held entitled to take legal action against the plaintiff.

[5]. The first appeal was filed by the defendants after a

delay of 5 years 43 days i.e. total 1868 days. The application under Section 5 of the Limitation Act filed along with appeal was dismissed vide order dated 01.10.2014 and as a result of that the appeal was also dismissed being time barred.

[6]. Thereafter, plaintiff filed CWP No.19290 of 2018, in which following order was passed by the Division Bench of this Court:-

“(1) The petitioner was allotted SCF No.29, Sector 4, Gurugram vide allotment letter dated 23.08.1996 (P1) being the highest bidder. The site was sought to be subsequently resumed vide notice dated 07.11.2001 for non-payment of balance allotment price. The petitioner challenged the said notice in the Civil Court and the matter was decided in his favour by the trial Court vide judgment and decree dated 10.10.2008 as well as by the First Appellate Court vide judgment and decree dated 01.10.2014. The judgments have attained finality.

(2) The petitioner thereafter paid all the statutory dues, balance allotment price or the extension fee etc. It is stated that there is nothing recoverable from the petitioner. The site has already been constructed. The petitioner has meanwhile deposited the stamp-papers so that the respondents may execute the Conveyance Deed in his favour and also issue Completion Certificate. As no action is being taken to issue the Completion Certificate or to execute the Conveyance Deed, the petitioner also served legal notice dated 14.05.2018 (P9) upon the respondents before filing the instant writ petition.

(3) It appears from the averments made by the petitioner that all the dues have been cleared and stamp-papers have also been deposited for execution of Conveyance Deed. The respondents are sitting tight over the matter without any rhyme or reason as no order/decision has been conveyed to the

petitioner.

(4) The writ petition is thus disposed of with a direction to the Administrator, HUDA, Gurugram and Estate Officer-I, HUDA, Gurugram to consider both the above-mentioned requests of the petitioner and take a final decision within one month from the date of receipt of certified copy of this order.”

[7]. In pursuance of the aforesaid direction issued by the Writ Court, the defendants/appellants instead of taking final decision on the request of the plaintiff, took the stand that RSA is pending in the High Court. As per original record shown by learned counsel for the appellants, the speaking order was passed on 27.02.2019 vide memo No.1107. Apparently, this order was passed after receipt of notice of COCP No.3596 of 2018 in which notice of motion was issued on 02.11.2018 for 28.02.2019. The said COCP is now fixed for 23.04.2019.

[8]. On receipt of notice of contempt petition, the efforts were made to proceed with the present appeal on the ground that earlier RSA was filed in time through Sh. Raman Gaur, Advocate vide diary No.1302186, but the same could not be listed on account of objections. No effort has been made by the appellants to collect the original record of the RSA which was filed through Sh. Raman Gaur, Advocate. However, a fresh RSA i.e. the present appeal was filed along with application under Section 5 of the Limitation Act seeking condonation of delay of 1509 days in filing the present appeal.

[9]. The conduct of the appellants is not worth appreciation. The affidavit filed by Mukesh Kumar, Estate Officer-I, HSVP, Gurugram in support of the application, appears to have been filed without there being any personal knowledge of the deponent and has been filed in routine, without weighing the rigor of filing such affidavit in the High Court.

[10]. Taking into consideration the totality of facts and circumstances of this case, I do not wish to grant any indulgence in condoning the delay of 1509 days in filing the present appeal. The first appeal filed before the lower Appellate Court was also barred by delay of 5 years 43 days. Such a pathetic attitude of the appellants cannot be appreciated. Consequently, the application for condonation of delay and the appeal are hereby dismissed.

April 09, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No