

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

CM No. 6663, 6664 and 6665 C of 2019 in
RSA No. 2468 of 2019
Date of decision: 14.5.2019

Bija (deceased) through his Legal representatives

...Appellants

Versus

Balwan and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. RS Tacoria, Advocate,
for the appellants.

JAISHREE THAKUR, J.

CM No. 6665 C of 2019

This is an application that has been filed under Order 22 Rule 4 of the Code of Civil Procedure for impleading legal representatives of Bija @ Vijay Singh.

For the reasons stated in the application, the same is allowed. Legal representatives of Bija @ Vijay are ordered to be brought on record.

CM stands disposed of.

CM No. 6663 and 6664 C of 2019

1. These are the applications that have been filed under Section 5 of the Limitation Act and Section 151 of the Code of Civil Procedure for condoning 1129 and 763 days delay in filing and re-filing the appeal respectively.

In brief, the facts are that Balwan and others respondents herein

filed a suit for partition averring in the plaint that the property in dispute was an ancestral property and having share therein they sought partition of the suit property which was allowed and the Additional Civil Judge, Jind, by judgment and decree dated 11.11.2011 ordered for a preliminary decree to be drawn up. Bija and his wife namely, Chander Patti and son Shishpal, the only three defendants, out of seven defendants in the suit, filed an appeal, which was dismissed by the judgment and decree dated 1.10.2013. Thereafter, instant appeal along with an application for condonation of 1129 days delay in filing the appeal has been filed. In the application, it is mentioned that Bija died on 31.8.2016 and it was he who used to look after all the proceedings in the Court. The legal representatives came to know about the dismissal of the appeal on the first week of October, 2016 when they met the counsel Shri I.S.Sheokand and on asking about the pendency of the litigation between the parties, were made aware that the appeal had been dismissed. It is prayed that the delay be condoned as it is not intentional. Along with application for condonation of 1129 days delay in filing the appeal, an application for condonation of 763 days delay in re-filing the appeal has also been filed on the ground that the delay occurred because the brief had been misplaced in the office.

3. I have heard learned counsel for the applicants/appellants and find no ground either to condone the inordinate delay in filing or re-filing the appeal. What is to be noted that Bija was one of the defendants in the suit that had been filed for partition and he was the appellant when the first appeal was filed by him and others which was dismissed on 1.10.2013.

Thus, he was very much alive for a period of almost three years after the

decision of the appeal by the first appellate court, but he chose not to file the appeal, and therefore, the legal representatives cannot take the benefit stating that they were unaware of the proceedings having been culminated into dismissal of the appeal. Even otherwise, what needs to be noted is the residence addresses of the legal representatives, who are none other than the sons and wife of the deceased Bija, which would show that they were joint in residence. Therefore, they cannot feign ignorance about the fate of the appeal being dismissed by the first Appellate Court. It is settled law that a litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. From the facts revealed above, there appears to be no justifiable reasons to condone an inordinate delay in filing and re-filing the appeal.

4. For the reasons afore-stated, both the applications for condonation of delay in filing and re-filing the appeal is dismissed. Consequently, the main appeal also stands dismissed.

14.5.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No