

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

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CR No.4708 of 2019

Date of Decision : 09.09.2019

Bijender

....Petitioner

v/s

Dharam Chand and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Sumeet Goel, Advocate and
Mr. Anil Ravolia, Advocate
for the petitioner.

B.S. Walia, J.

[1] Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying for quashing/setting aside Order (Annexure P/1) dated 31.05.2019, passed by the learned Additional District Judge, Gurugram, dismissing the application for condonation of delay in filing the appeal and resultantly dismissing the appeal also as time barred.

[2] Brief facts of the case, leading to the filing of the revision petition are that the respondent-plaintiff had filed a suit for recovery against the petitioner-defendant as also other persons, which was decreed vide judgment (Annexure P/2) dated 16.07.2014, by the learned Additional Civil Judge (Senior Division), Gurugram.

[3] Plea of the petitioner is that he was not served much less properly served in the civil suit, therefore in the circumstances, on receipt of notice in the execution petition, the petitioner filed an application under Order 9 Rule 13 read with Section 151 CPC. However, the same was dismissed by the learned Civil Judge (Junior Division), Gurugram on 16.04.2018. Thereafter, the petitioner filed Civil Revision No.5346 of 2018

before this Court against order dated 16.04.2018, whereby the application filed under Order 9 Rule 13 CPC had been dismissed.

[4] Civil Revision Petition No.5346 of 2018 which had been dismissed in default was restored to its original number and was permitted to be withdrawn, with liberty to avail of remedy of appeal, vide Order (Annexure P/6) dated 04.12.2018. Thereafter, some of the petitioners, who had invoked the revisional jurisdiction of this Court, by way of Civil Revision No.5346 of 2018 filed Civil Appeal before the learned Additional District Judge, Gurugram. It is the stand of the petitioner that he was also requesting his counsel to file an appeal on his behalf also, but the same was not filed, where upon the petitioner changed his counsel and filed an appeal before the learned Additional District Judge, Gurugram along with an application for condonation of delay. However, vide Order dated 31.05.2019, application for condonation of delay in late filing of the appeal was dismissed, as a result of which, the appeal was also dismissed as being time barred.

[5] Learned counsel for the petitioner contends that in the application, seeking condonation of delay in late filing of the appeal, it was contended that the appeal was filed late, as the earlier counsel, who had filed appeal on behalf of Smt. Anita and others i.e. similarly situated as the petitioner had not filed the appeal on behalf of the petitioner *on certain grounds*, therefore, the appeal was being filed after inspection and taking certified copies of documents and judgments, which were supplied lastly on 23.04.2019, that rules of limitation were not meant to destroy the rights of the parties but that every legal remedy must be kept alive for a legislatively fixed period of time, that the petitioner had a good case on merits, No useful purpose would be served by delayed filing of the appeal, that it would be in

the interest of justice, equity and justice to set aside the impugned order and to allow the application for condonation of delay.

[6] On 19.08.2019, learned counsel for the petitioner requested for time to file an affidavit where after the petitioner has filed an affidavit dated 26.08.2019 setting out the dates on which, the application was moved for inspection, as well as for taking certified copies of documents and judgments, as also the dates on which the inspection was allowed and certified copies of documents and judgments supplied.

[8] I have considered the submissions of learned counsel and have perused the record.

[9] Admittedly, *ex parte* judgment and decree passed by the learned Additional Civil Judge (Senior Division), Gurugram is dated 16.07.2014. The petitioner entered appearance before the Executing Court on 21.02.2015 and filed an application under Order 9 Rule 13 CPC on the same date. The same was dismissed on 16.04.2018, where after the petitioner filed Civil Revision No.5346 of 2018 around 13.08.2018. Civil Revision No.5346 of 2018 was dismissed in default but the same was restored and vide order dated 04.12.2018 the petitioner was allowed to withdraw the civil revision to avail remedy of appeal against Order dated 16.04.2018, dismissing the application under Order 9 Rule 13, while mentioning that in case application for condonation of delay was filed, the same would be considered on its own merits in the light of Section 5 & 14 of the Limitation Act, 1963. However, certified copy of documents such as service report on summons etc. was applied for only on 02.04.2019 and was received on 08.04.2019, where after certified copy of judgment of the learned Civil Judge (Junior Division), Gurugram dated 16.04.2018, dismissing the application under Order 9 Rule

13 was applied for on 23.04.2019 and was received on the same day. Thereafter, appeal was filed on 24.04.2019.

[10] That in the revision petition, it has been pleaded that the civil appeal had been filed before the learned Additional District Judge, Gurugram by Smt. Anita and others (dates of filing not mentioned either in the appeal or in the revision petition) after order dated 04.12.2018 in civil revision No.5346 of 2018 and although the petitioner had repeatedly requested his counsel to file an appeal, the same was not filed, therefore, the petitioner changed his counsel and filed an appeal before the learned Additional District Judge, Gurugram along with an application for condonation of delay of 373 days.

[11] A perusal of the application for condonation of delay filed by the petitioner along with the appeal before the learned District Judge, Gurugram i.e. Annexure P/11, mentions that the previous counsel had not filed a separate appeal on behalf of the appellant *on certain grounds* and that the appeal was being filed after inspection and taking certified copies of documents and judgments, which were lastly supplied on 23.04.2019. The reason mentioned in the application for condonation of delay was that previous counsel had not filed a separate appeal *qua* the appellant on certain grounds, therefore, it is apparent that a decision had been taken not to file a separate appeal on behalf of the appellant, prior to filing of appeal on 24.04.2019 along with an application for condonation of delay i.e. (Annexures P/10 & P/11).

[12] Be as it may, since the appeal by other similarly situated as the petitioners i.e. Smt. Anita and three others was filed and a appeal on behalf of the appellant was not filed till 24.04.2019, it is apparent that the petitioner slept over his rights for even after setting aside of dismissal in default of

Civil Revision No.5346 of 2018 on 04.12.2018 and permission to withdraw

the revision petition with liberty to avail of remedy of appeal and the observations that if an application under Section 5 & 14 of the Limitation Act, 1963 was filed, the same would be considered on its own merits, the petitioner chose not to file the appeal for a period of close to 05 months thereafter and filed it only on 24.04.2019. The explanation given in the revision petition that the appeal was not filed by his counsel despite his repeatedly asking the counsel does not establish sufficient cause for not filing the appeal in time, for if despite repeated requests, the counsel was not filing the appeal, it was always open to the petitioner to file the appeal through another counsel at the earliest and not wait for a period of close to 04-05 months to apply for documents and certified copy of judgment of order dated 16.04.2018. The conduct of the petitioner does not reflect exercise of good faith. The civil suit for recovery of amount of Rs.34 lacs along with interest filed against the appellant petitioners and others on 02.01.2009 was decreed vide *ex parte* judgment and decree dated 16.07.2014. The petitioner filed Civil Revision No.5346 of 2018 against Order dated 16.04.2018, dismissing the application under Order 9 Rule 13 CPC after delay of 04 months of passing of the order i.e. around 13.08.2018 and the same was dismissed in default, where after the civil revision was restored and was permitted to be withdrawn to avail of remedy of appeal against order dated 16.04.2018 vide order dated 04.12.2018. Thereafter, the petitioner waited for close to 05 months before filing of the appeal on 24.04.2019 after passing of order of High Court dated 04.12.2018 with a total delay of 373 days as against the requirement to file the appeal within 30 days. The learned ADJ, Gurugram, observed that even if the Court waived the period during which the civil revision petition was pending before the High Court even then the petitioner was required to file the appeal immediately after the passing of order of

Hon'ble the High Court on 04.12.2018 and the petitioner had failed to explain the reason for not filing the appeal within the specified period of time. The only explanation given was that the appeal had not been filed *qua* the petitioner by the counsel on certain grounds. Thus, the petitioner has failed to make out sufficient cause for condonation of delay for not filing the appeal at the earliest after the order of the High Court dated 04.02.2018, restoring Civil Revision Petition No.5346 of 2018 dismissed in default and permitting the revision petition to be withdrawn with liberty to avail remedy of appeal. The conduct of the petitioner also does not reflect exercise of good faith as per definition given under Section 2-H of the Limitation Act, 1963, as per which, nothing shall be deemed to be done in a good faith which is not done with due care and attention. The petitioner has failed to make out sufficient cause for condoning the delay in late filing of the appeal. No ground whatsoever has been shown, warranting interference with the well reasoned Order dated 31.05.2019, passed by the learned Additional District Judge, Gurugram. Accordingly, finding no merit in the revision petition, the same is ***dismissed in limine***.

(B.S. Walia)
Judge

September 09, 2019
'Rajneesh'

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