

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4363 of 2009 O&M)

Date of Decision:24.9.2019

Anil Kumar and another

---Appellants

vs.

Ram Gopal and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Keshav Partap Singh, Advocate
for the appellants
Mr. V.S.Rana, Advocate
for respondent No. 1

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the defendants from closing the mories, gate, chhajja and encroaching the property mentioned in para 1 of the plaint, was dismissed by the trial court vide judgment and decree dated 3.3.2006 that came to be affirmed in appeal by the Additional District Judge, Faridabad vide judgment and decree dated 19.11.2008.

Along with the appeal, an application under Section 5 of the Limitation Act, 1963 (in short “the Act”) for condoning delay of 235 days in filing the appeal has been filed.

Counsel for the applicants-appellants would argue that in view of averments raised in paras 4 to 6 of the application supported by joint affidavit of Anil Kumar and Sunil Kumar sons of Nathu Mal Bindal, there are sufficient grounds for condoning delay of 235 days in filing the appeal.

It is submitted that the court is required to adopt a liberal and non pedantic approach while dealing with the question of condonation of delay so that meritorious claim of a litigant is not rejected on technical consideration. It is further submitted that neither the applicants have derived any benefit by filing appeal after delay of 235 days nor any prejudice has been caused to the respondents because of delay.

Counsel representing the respondent No. 1 would state that respondent No. 1 has filed reply to the application seriously contesting plea of the applicants set up in paras 4 to 6 of the application. It is further argued that contents of these paras are mala fide and against the record. No affidavit of Shiv Kumar in support of averments which are to his personal knowledge has been filed. It is further argued that a party who is not vigilant and diligent in pursuing his remedy cannot seek indulgence of the court in exercise of discretionary jurisdiction more particularly in the circumstances that the courts have recorded consistent findings rejecting their claim for grant of discretionary relief of injunction.

I have heard counsel for the parties, perused the paper book particularly the application for condonation of delay and reply thereto filed by respondent No. 1.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract the averments raised in paras 4 to 6 of the application that have been made the basis for constituting sufficient ground for condoning delay of 235 days in filing the appeal:-

“4. That after dismissing (sic) of appeal filed by the appellants, Shiv Kumar after obtaining the certified copies approached his advocate for filing of the appeal before this

Hon'ble Court and submitted entire case file as well as his power of attorney for doing the same.

5. That at the time of filing of the appeal before this Hon'ble Court which was within time, it transpired by counsel that Shiv Kumar was not competent to file an appeal before this Hon'ble Court as he was only a defendant in civil suit No. 718/93 and only Anil Kumar and Sunil Kumar his brothers who were plaintiffs in suit were competent to file an appeal before the Hon'ble High Court.

6. That Shiv Kumar on the advice of the counsel was directed to get the power of attorney of his two brothers i.e Anil Kumar and Sunil Kumar for filing the appeal before the Hon'ble High Court.”

A perusal of the aforesaid extract makes it evident that after dismissal of appeal filed by the applicants-appellants, Shiv Kumar after obtaining certified copies approached his advocate for filing of appeal before this court. Para 5 also makes reference that Shiv Kumar was not found competent to file appeal before this court as he was only a defendant in civil suit No. 718/93. Nothing has been mentioned in the application as to which advocate Shiv Kumar approached for filing of appeal who advised him that he is not competent to file the appeal being a defendant in the suit. The application does not find support from affidavit of Shiv Kumar in respect of the facts to his personal knowledge. It appears that averments in paras 4 to 6 have been raised with a view that these facts can not be verified from Shiv Kumar. Taking into consideration that allegations raised in paras 4 to 6 of the application are vague coupled with that allegations are not supported by affidavit of Shiv Kumar, I find it difficult to accept contention of the applicants that there are sufficient grounds for condoning delay of

235 days in filing the appeal. I would hasten to add that this court is not oblivious of the fact about the settled position in law that the court is required to adopt a liberal and pragmatic approach while dealing with question of condonation of delay. However, Hon'ble the Apex Court in **Ramlal and others vs. Rewa Coalfields Limited AIR 1962 SC 361** has held that even if sufficient cause has been shown, parties are not entitle to condonation of delay as a matter of right. The proof of sufficient cause is a condition precedent for exercise of discretionary jurisdiction vested in the Court by Section 5 of the Act.

As in the present case, the averments raised by the applicants seeking condonation of delay of approximately 8 months absolutely have no basis to believe, the applicants have miserably failed to make out a case for condonation of delay. That being so, application for condonation of delay is liable to be dismissed and ordered accordingly.

In view of what has been discussed hereinbefore, the application for condonation of delay is dismissed. As a natural corollary, the appeal is dismissed being barred by limitation.

(Rekha Mittal)
Judge

24.9.2019
paramjit

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