

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

RSA-1950-2010(O&M)

Date of decision:-4.7.2019

Smt.Prito @ Pritam Kaur

...Appellant

Versus

Dalip Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.S. Sachdev, Advocate
for the appellant.

Mr.R.S. Bajaj, Advocate
for the respondent.

H.S. MADAAN, J.

Plaintiff Smt.Prito @ Pritam Kaur had brought a suit for declaration and permanent injunction against defendant Dalip Singh. After contest that Civil Suit No.366 of 24.12.1997 was dismissed by Additional Civil Judge (Sr.Divn.), Nakodar vide judgment and decree dated 31.10.2002. Feeling aggrieved, the plaintiff had filed an appeal before District Judge, Jalandhar, which was assigned Regular Appeal No.71 of 2004 and was entrusted to Additional District Judge, Jalandhar, who vide judgment and decree dated 15.12.2004 dismissed the said appeal upholding the judgment and decree passed

by the trial Court. Still feeling dissatisfied the plaintiff has knocked at the door of this Court by way of filing present regular second appeal. However, it has been filed belatedly by 1889 days. An application under Section 5 of the Limitation Act read with Section 151 CPC has been filed by the appellant/plaintiff for condoning the said delay.

Inter alia, in the application it is contended that after dismissal of the suit by the trial Court on 31.10.2002, the appellant-plaintiff had engaged Sh.Ashok Bajaj, Advocate for the purpose of filing an appeal before District Judge, Jalandhar, who had filed such appeal on 9.12.2002; that during the course of hearing of the appeal, the counsel told the appellant-plaintiff that there was no necessity of her presence during the course of hearing and he would intimate her about the fate of the case; that the appeal was dismissed by the Additional District Judge, Jalandhar vide order dated 15.12.2004, however, the counsel representing the appellant-plaintiff there, did not inform her regarding the dismissal of the appeal and she came to know about it from the opposite side; thereafter she approached Sh.Ashok Bajaj, Advocate, who confirmed that the appeal had been dismissed stating that he would file a regular second appeal in the High Court; that the appellant had paid a sum of Rs.5,000/- as an advance fee to counsel Sh.Ashok Bajaj, Advocate in 2005 itself; that the appellant was informed that the appeal had been filed and was

pending in the High Court; that son of the appellant inquired about the case number and date of filing of appeal in the Court and he was taken to Chandigarh for meeting the Advocate but was informed that Advocate was away to foreign country; that despite repeated requests the fate of the appeal was not informed to the appellant; therefore, the appellant was left with no other option but to file a complaint against Sh.Ashok Bajaj, Advocate on 10.10.2009 to Bar Council of Punjab & Haryana at Chandigarh; that after notice by Bar Council appellant came to know that papers were given to counsel at Chandigarh but no appeal had been filed; that the documents had not been returned there; ultimately on 14.5.2010, the appellant was asked to collect the documents from Sh.D.R. Punia, Advocate and she did so on 15.5.2010; that a perusal of certified copy reveals that even certified copy of order dated 15.12.2004 had been applied on 16.8.2007 after about three years; that the appellant engaged a counsel for filing the appeal, resulting in delay; that the appellant is an illiterate lady; that she had engaged a counsel, paid his fee but was cheated, in that way delay is not intentional. It has been mentioned that copy of complaint and notices issued to the counsel could be produced before this Court at the time of arguments.

The application is being resisted by respondent – defendant. In the written reply filed by him, he has contended that the appellant has concocted a story just to cover inordinate delay in filing

of the appeal; that the respondent is resident of U.K. and he mostly remains there, as such there was no question of his telling to the appellant about dismissal of the appeal. Therefore, no ground is made out for condonation of gross delay and application be dismissed.

I have heard learned counsel for the parties besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

In the instant case, the appellant has been unable to satisfy the Court that she had sufficient cause for not preferring an appeal within time. The explanation rendered is quite vague, which is not found to be convincing. Although in a civil case the presence of litigants is not required but such a litigant is expected to pursue the matter properly and keep in regular touch with his/her counsel, rather than sitting pretty at home for years together not bothering to know the progress made in the proceedings and fate of the case. It does not appeal to reason that the appellant-plaintiff would go by alleged

assurance of her Advocate that there was no necessity of her presence during the course of proceedings and he would intimate her about fate of the case. The plaintiff having lost the litigation in the trial Court, in normal circumstances would have been cautious and vigilant enough to pursue the matter before the First Appellate Court. Her not doing so and sitting quietly at home is quite hard to accept. Similarly her coming to know about dismissal of appeal from the opposite side does not seem convincing in light of the assertion made by the respondent – defendant in his written reply that he is resident of U.K. and mostly remains there. The appellant has not disclosed as to when she was allegedly told by the opposite party about dismissal of her appeal thereafter when she had allegedly approached her counsel Sh.Ashok Bajaj, Advocate. The attitude of the applicant/appellant in filing regular second appeal also comes out to be very casual. As per her own case, she has nowhere contended that she had asked Sh.Ashok Bajaj, Advocate to show her the relevant papers regarding filing of the appeal. She has nowhere alleged that she had executed any Vakalatnama in favour of Sh.Ashok Bajaj, Advocate or signed any papers for the purpose of filing an appeal before the High Court, which is quite unnatural keeping in view past alleged conduct of Sh.Ashok Bajaj, Advocate. Then as per version of the appellant, her son had inquired about the case number and date of filing of appeal in the High Court but again the date, month or year

of his alleged doing so has not been given. It has been asserted in para No.5 that son of the appellant was taken to Chandigarh for meeting the Advocate but was informed that Advocate was away to a foreign country. The name of the said Advocate has not been given. The person, who had allegedly taken son of the appellant to Advocate at Chandigarh has not been disclosed. The entire conduct of the appellant does not come out to be above board. Though she has alleged that she had filed a complaint against Sh.Ashok Bajaj, Advocate on 10.10.2009 to Bar Council of Punjab & Haryana, Chandigarh and that thereafter papers were handed over to her by Sh.D.R. Punia, Advocate but how Sh.D.R. Punia, Advocate came in possession of the papers and what connection he has got with the present case has not been disclosed. In the application, it is mentioned that copy of complaint and notices issued to counsel can be produced before this Court at the time of arguments but neither any such document has been attached with the application nor shown to the Court during arguments. The entire story put up comes out to be suspicious and doubtful. The delay in this case is more than 5 years. No satisfactory or plausible explanation has been rendered, which might have been taken into consideration to condone the delay. No doubt small delay in filing of appeal running into days or a few months can be condoned in the interest of justice but condoning delay of years together without there being any cogent and

convincing explanation would amount to nullifying Section 3 of the Limitation Act, which is not called for. The Apex Court in judgment **P.K. Ramachandran Versus State of Kerala, 1998 AIR (SC) 2276**, a case where delay of 565 days was condoned by the High Court in filing of the appeal for the reason that at the time Advocate General's office was fed up with many Arbitration matters equally important, had observed as under:

5. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

Under the circumstances, I find that no cogent, convincing or genuine reason is there to condone the gross inordinate delay in filing the appeal. Therefore, the application stands dismissed. The appeal is obviously time barred and it is dismissed for the said reason.

4.7.2019

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)

JUDGE