

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

RSA-2154-2015(O&M)

Date of decision:-2.9.2019

Harpreet Kaur minor through her mother Sukhwinder Kaur.

...Appellant

Versus

Sakattar Singh and another

...Respondents

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

Present: Ms.Reena, Advocate for
Mr.K.S. Kahlon, Advocate for the appellant.

Mr.Prateek Mahajan, Advocate and
Ms.Surabhi Kaushik, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Ms.Harpreet Kaur, minor daughter of Sh.Tarlok Singh, resident of village Mathola, Tehsil Batala, District Gurdaspur through her mother, natural guardian and next friend Smt.Sukhwinder Kaur had brought a suit against the defendants – Sakattar Singh and Ranjodh Singh both sons of Sh.Santokh Singh, residents of that very village seeking possession by way of specific performance of agreement to sell dated 18.3.2001; in the alternative seeking recovery of Rs.5

lakhs.

As per the version of the plaintiff, defendants being owners of suit land measuring 8 kanals situated at village Mathola, Tehsil Batala entered into an agreement to sell the same with the plaintiff on 18.3.2001 for a sum of Rs.2,50,000/- receiving the entire consideration amount agreeing to execute the sale deed on or before 28.5.2001; that on the stipulated date, mother of the plaintiff went to the office of Sub Registrar concerned along with expenses for completion of transaction but the defendants failed to execute the sale deed, giving rise to a cause of action to the plaintiff to bring the suit in question.

On notice, the defendants appeared and filed written statement contesting the suit denying having entered into any agreement to sell with the plaintiff or receiving Rs.2,50,000/- as earnest money etc. According to the answering defendants, the plaintiff in collusion with some anti-social elements had pressurised them to transfer the suit land and got signatures of defendant No.1 on blank and unstamped paper, which was later on fabricated into an agreement to sell; that the plaintiff and her mother had already filed a suit for possession on the ground that the suit property belonged to Bakshish Singh. Such defendants had raised several legal objections also and in the end they prayed for dismissal of the suit.

The plaintiff had filed replication controverting the

allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether defendants have executed the agreement to sell dated 18.3.2001 in favour of the plaintiff under coercion in the presence of Head Constable without receiving any sale consideration? OPD.
2. If above issue has not been proved whether plaintiff has been ready and is still ready to perform his part of consideration? OPP.
3. Whether plaintiff is entitled for specific performance of the agreement to sell dated 18.3.2001? OPP.
4. Whether in the alternative plaintiff is entitled for recovery of Rs.5,00,000/- being damages and compensation? OPP.
5. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPD.
6. Relief.

The following additional issue was also framed:

5(A) Whether there is a valid agreement dated 18.3.2001 between the parties? OPD

In order to prove her case, the plaintiff got examined Sh.Jarnail Singh as PW1, Sh.Jagir Singh as PW2, Smt.Sukhwinder

Kaur as PW3 and Sh.Mohinder Pal, Deed Writer as PW4 besides tendering certain documents.

On the other hand, the defendant No.1 Sakattar Singh had got his statement recorded as DW1.

After hearing the learned counsel for the parties, the trial Court had decided issue No1 against the defendants and in favour of the plaintiff, issue No.2 in favour of the plaintiff and against the defendants, issue No.3 against the plaintiff and in favour of the defendants, issue No.4 was decided partly in favour of the plaintiff and against the defendants, issue No.5-A was decided against the defendants and in favour of the plaintiff, issue No.5 against the defendants and in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 3.11.2006 decreed the suit of the plaintiff and against defendant No.1 for recovery of Rs.2,50,000/- with interest @ 6% per annum w.e.f. 18.3.2001 till realization of the decretal amount. However, suit of the plaintiff was dismissed against defendant No.2 with proportionate costs.

Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to learned Additional District Judge(Ad hoc), Fast Track Court, Gurdaspur, who vide judgment dated 25.10.2010 accepted the appeal, set aside the judgment and decree passed by the trial Court and consequently, dismissed the suit

of the plaintiff with costs.

Now it was turn of the plaintiff to feel aggrieved and she has filed the present regular second appeal before this Court, notice of which was issued and the respondents-defendants have appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in this appeal.

The appeal was filed belatedly. There was delay of 86 days in filing of the appeal and 1442 days in refiling of the appeal. Notice of the applications for condonation of such delays were given to respondents-defendants, who put in appearance through counsel. Vide order dated 25.4.2018 delay of 86 days in filing appeal was condoned.

Now the thing which remains to be determined is whether there are sufficient reasons for condoning delay of 1442 days in refiling of the appeal.

The case set up by the applicant/appellant in the application under Section 5 of the Limitation Act seeking condonation of such delay is that the appellant filed the accompanying regular appeal in this Court vide diary No.682291 dated 2.6.2011, however thereafter the file could not be traced out by registry despite various efforts made by counsel for the appellant, therefore, an application was moved in the registry on 31.10.2013;

on 3.5.2014, a letter was received by the counsel for the appellant from the registry that the petition in question was lying in the objection vide office objection dated 17.6.2011, during this period the certified copy of the judgment became incomplete as some pages were torn and fresh copy was made available on 7.3.2015, resulting in the delay, which according to the applicant/appellant is bonafide.

The application is being resisted by the defendants/respondents. In the written reply filed by them, they have contended that the applicant/appellant has failed to show sufficient cause for not preferring the appeal within time period prescribed by law and had failed to satisfactorily explain the inordinate delay of 86 days in filing the appeal and 1442 days in refiling the appeal. It was further contended that once the appeal was filed on 2.6.2011, the registry of this Court raised certain objections on 17.6.2011 and the appeal was available in the Objection Section of DRR Branch of this Court from 17.6.2011 onwards, however, no effort was made by the appellant or his counsel to collect the same for a period of more than 2 years and 4 months clearly showing that that appellant/her counsel was not vigilant about the case; that on 31.10.2013, a vague application was moved to the Registrar of this Court by counsel for the appellant that he has not been able to locate his file and necessary action be taken; the said application was replied to by the Registrar General explaining that the petition of the appellant was lying in the

Objection Section of DRR Branch of this Court vide office objection dated 17.6.2011; that the counsel for the appellant was further requested to collect his petition from the objection counter of DRR Branch during office hours; that even after receiving the said letter dated 3.5.2014 from Registrar General of this Court, no action was taken by appellant or her counsel for a period of about eight months; that on 11.2.2015 the appellant applied for certified copy of the judgment of Additional District Judge, Gurdaspur since as alleged the earlier certified copy had become incomplete and fresh certified copy was got prepared and received on 27.2.2015; even after receiving the fresh certified copy, the appeal came to be refiled finally after 40 days on 9.4.2015, in that way the appellant/her counsel have been totally careless in prosecuting the present appeal and no sufficient cause is there to condone such huge delay of about four years. Therefore, the delay be not condoned.

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.

The reasoning given for such huge delay in refiling of the appeal is least convincing, rather that shows a very casual and callous attitude in not bothering to pursue the matter properly reflecting a lethargic approach. After filing of the appeal, the matter should have

been pursued properly. The movement of papers should have been tracked instead of simply forgetting about it after institution, thereafter one fine morning writing a letter to Registrar and on getting reply from the Registrar General not taking any prompt action, rather moving at snail's pace. Such attitude and conduct does not call for taking of any sympathetic view in the matter and condoning the huge delay of 1442 days in refiling of the appeal. Firstly the appeal was not filed within time limit and there was a delay of 86 days in institution of the appeal, then delay of about four years in refiling of the appeal. Such type of negligence and lethargic conduct can certainly not be taken lightly. Therefore, no ground is made out to condone such huge delay in refiling of the appeal and the appeal being time barred is to be dismissed.

However, on merits also, the appellant does not have any case. The trial Court had also found various infirmities in case of the plaintiff but even then granted alternative relief of recovery to the plaintiff. The trial Court in para No.10 of the judgment has observed that as per entries in the jamabandi Ex.PX, Sakattar Singh and Ranjodh Singh both the defendants have got 1/2 share in the land measuring 8 kanals comprised in Khasra No.12//21 (8-0), meaning thereby that defendants are owners of 2 kanals each in the suit land. Since it has not been proved on record that Ranjodh Singh had executed the agreement, so only 2 kanals of land is there to be owned

by Sakattar Singh, whereas the alleged agreement is for 8 kanals, therefore, the agreement in question cannot be specifically enforced.

The judgment of First Appellate Court is much more convincing based upon proper appraisal and appreciation of evidence and correct interpretation of law. Learned Additional District Judge (Ad hoc) Fast Track Court, Gurdaspur has dealt with the issue whether Sakattar Singh alone could execute the agreement to sell on behalf of Ranjodh Singh, the answering the question in negative observing that there was no privity of contract between Ranjodh Singh and Harpreet Kaur. By giving detailed reasoning learned First Appellate Court has concluded that signatures of Sakattar Singh had been procured on blank papers; that signatures of Sakattar Singh are there on the bottom of page No.1 of the stamp paper. Learned Additional District Judge (Ad hoc) Fast Track Court, Gurdaspur had minutely discussed the different spacing between the lines, the location of signatures of Sakattar Singh while coming to the conclusion that Sakattar Singh was not present and the plaintiff was having an unwritten signed paper of Sakattar Singh, which was later on converted into agreement to sell and further if the entire consideration amount had been paid, the sale deed could have been got executed on that very day and there was no occasion to postpone the same. Various contradictions in the statements of the witnesses examined by the plaintiff in that regard had been noticed.

The findings recorded by the Additional District Judge (Ad hoc) Fast Track Court, Gurdaspur do not suffer from any irregularity or illegality, which might have called for setting aside of the same.

No substantial question of law arises in this appeal.

Finding not merit in the appeal, the same stands dismissed.

2.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No