

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

**CM-11325-C-2016 in/and
RSA-4335-2016 (O&M)
Date of Decision: July 25, 2019**

Tarlochan Singh

Appellant

Versus

Parminder Singh and others

Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vijay Rana, Advocate for
Mr. Abhishek Arora, Advocate
for the appellant.
Mr. G.S. Bhatia, Advocate
for respondent No.1.

JAISHREE THAKUR, J. (Oral)

1. This is a regular second appeal filed by the appellant seeking to challenge the judgement and decree dated 22.09.2014 passed by the Additional District Judge, Fatehgarh Sahib whereby the judgement and decree dated 31.03.2011 passed by the Addl. Civil Judge (Sr. Division) Amloh in civil suit no.28 of 29.04.2004 decreeing the suit have been set aside dismissing the suit.

2. In brief, the facts are that the appellant filed a suit against the respondent and others for declaration that sale deed no.2160 dated 24.03.2004 be declared as null and void as the sale deed was regarding ancestral and coparcenary property in the hands of the defendant no.1 and the sale deed was without legal necessity. The suit was decreed to the extent that the sale deed was declared null and void holding that the land in question was ancestral and coparcenary property in the hands of the defendant no.1.

3. Aggrieved against the said judgment and decree, the subsequent vendees challenged the decision before the Additional District Judge Fatehgarh Sahib by instituting civil appeal no.66 of 2012 dated 03.05.2012 which appeal was allowed and the suit filed by the plaintiff-appellant was dismissed by judgment and decree dated 22.09.2014. Aggrieved against the dismissal of the suit the plaintiff-appellant preferred the instant appeal alongwith an application for condonation of delay of 616 days in filing the appeal. In that application for condonation of delay a specific plea has been taken that after the impugned judgement and decree was passed by the first Appellate Court, he was not informed of the said decision. It is only when he contacted his counsel on 23.06.2016 he came to know that the appeal had been decided against him and immediately, thereafter, he applied for a certified copy of the judgement and decree which was prepared on 01.07.2016. It was on receipt of the certified copy of the judgement and decree when he approached his counsel at Chandigarh for filing the appeal and that he came to know that there was a delay of 616

days. It is pleaded that the delay in filing the appeal is not intentional and the same ought to be condoned.

4. Notice of the application was issued and reply has been filed raising an objection therein. It is contended that the contentions as raised in the application seeking condonation of delay are patently false as the appellant had been appearing before the revenue authorities where mutation proceedings were pending. It is submitted that the appellant had challenged the mutation entered in the favour of the vendees before the Assistant Collector, 2nd Grade, Amloh on the basis of the order passed by the Civil Judge. In the proceedings before Assistant Collector, 1st Grade, the factum of the appeal having been decided on 22.09.2014 was taken into consideration and the mutation as entered based on the decree of the Civil Court, Amloh was set aside by order dated 10.03.2016. It is argued that the contention raised that the appellant contacted his counsel on 23.06.2016 is falsified by the fact on reading of the order dated 10.03.2016 and therefore, a person who has not approached the Court with clean hands would not be entitled to seek condonation of delay.

5. I have heard learned counsel for the parties and have also perused the reply that has been filed to the application seeking condonation of delay of 616 days. The stand of the appellant herein is that he was not made aware of the order dated 22.09.2014 by his counsel and that he could not contact him before 23.06.2016. A perusal of the reply filed would reflect that order of the first Appellate Court was well within the knowledge of the appellant as the Commissioner, Patiala Division had accepted the revision

petition filed on 24.03.2015 and remanded the case back to the Court of Assistant Collector, 1st Grade to decide the mutation proceedings in view of the judgement passed by the learned Additional District Judge, Fatehgarh Sahib dated 22.09.2014, therefore, the inescapable conclusion that this Court comes to is that the appellant had absolute knowledge of the acceptance of the appeal by the Additional District Judge, Fatehgarh Sahib on 24.03.2015. The averments made in the application for condonation of delay patently do not support and are against the record and a false affidavit has been affirmed in support of the contentions raised. Reliance has been placed on the judgement rendered in '**Pundlik Jalam Patil through LRs vs. Exe. Eng. Jalgaon Medium Project and Anr., 2008 (4) RCR (Civil) 885**', in which a similar situation of delay was sought to be condoned by the party making false statement and the Hon'ble Supreme Court held that where an incorrect statement has been made it is sufficient to reject the application without further inquiry. It was also held that a party taking a false stand in order to overcome the bar of limitation should not be encouraged. This view has been followed in other judgements of the Hon'ble Supreme Court such as '**Basawaraj and Anr. vs. Special Land Acquisition Officer, 2014 (1) RCR (Civil) 603**' and '**Office of the Chief Post Master General and Others vs. Living Media India Limited, 2012 (2) SCT 269; 2012 (3) SCC563**'.

6. A reading of the pleadings would clearly reflect that the appellant herein had full knowledge of the appeal having been allowed and despite that he chose not to approach the High Court within the specified

time and in fact has furnished a false affidavit that he had no knowledge of the appeal having been allowed against him and was made aware of the order only on 23.06.2016 and thus has not approached this Court with clean hands. In view of this, this Court is of the opinion that there is no reason for allowing the application for condonation of delay and the same is dismissed.

The appeal also stands dismissed being barred by time.

July 25.07. 2019
seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No