

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

**RFA-2824-2017 (O&M)
Date of decision : 16.07.2019**

Jai Karan Singh and another **.... Appellants**

Versus

State of Haryana and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Sandeep Parkash Chahar, Advocate
for the appellants.

Ms. Vibha Tewari, AAG, Haryana.

G.S. SANDHAWALIA, J (ORAL)

CM-6641-CI-2017

Application for condonation of delay of 1554 days in filing the present appeal has been preferred against the award dated 11.10.2012 of the District Judge Court, Rohtak. The ground taken is that the counsel who had been engaged had mentioned that the matter takes time to refer the same to the District Court and the appellants would be required to appear before the District Court. The appellants had come to know about finalization of reference petitions of village Kheri Sadh as their compensation had been increased from ₹16 lakhs to ₹24 lakhs. In such circumstances, they came to know that their reference petition had been dismissed vide judgment dated 11.10.2012 and, therefore, the delay was unintentional and beyond their control. However, plea is taken that no personal service had been effected upon them and they had no knowledge about the pendency of the writ petition. The application is opposed by the reply of the State on the ground that the presence of the counsel has been marked. Sufficient cause is apparently made out in the facts and circumstances which shall also be discussed below while remanding the matter.

Accordingly, the application is allowed and the delay of 1554 days is condoned.

Main case

As noticed, the reference petition was dismissed on the ground that the appellants did not lead any evidence and even the cost imposed on 15.05.2012 had not been paid and, accordingly, the evidence of the petitioner had been closed by Court order. Sufficient opportunities having been granted, the Reference Court dismissed the reference petition.

Counsel has drawn attention to the record, which has been summoned to show that on the passing of the award, the reference petition as such had been filed through one Mr. Samesh Singh Malik, Advocate on 27.02.2008. The same had only been forwarded on 12.01.2011 to the District and Sessions Judge, Rohtak after almost 3 years. The matter was eventually listed on 19.01.2011 before the Civil Court and notice was issued to the respondents and not to the land owners or the counsels. The matter was therefore taken up on 07.03.2011, wherein large number of counsels appeared except Mr. Samesh Singh Malik, Advocate. Issues were framed on 08.06.2011. Thereafter, the case was transferred to another Reference Court.

As it is to be noticed that costs even were imposed on 15.05.2012 and on non-payment as such, the presence of the counsel was marked when the evidence was closed on 11.10.2012 and for the first time presence of Mr. Samesh Singh Malik, Advocate is mentioned in the short order and as also finds mention in the main order dismissing the appeal for the reasons mentioned above.

It was, thus, apparent that the counsel for the appellants is justified to hold out that they were never put to notice of the proceedings which had been referred at the belated state of 3 years and the petition had thereafter been dismissed on deposit of costs. It is apparent that the matter was being heard with a Bunch of cases as such and other counsels were appearing for the land owners. Presence of Mr. Samesh Singh Malik, Advocate has not been recorded in the earlier occasion pertaining from the period 19.01.2011 to 15.05.2012 and in the absence, notice had been issued. One fact cannot be disputed that the appellants had also been negligent as such in not even bothering to find about the pendency of the case from the year 2008 till the dismissal. They rather have only filed the appeal for the first time in the year 2017 and therefore are also responsible for the casual approach towards the litigation.

Resultantly, the appeal is allowed conditionally by setting aside the order of the Reference Court dated 11.10.2012 and remanding the matter for fresh decision. The appellants shall pay a sum of ₹5,000/- to the District Legal Services Authority, Rohtak. Parties shall appear before the District Judge, Rohtak on 19.08.2019.

(G.S. SANDHAWALIA)
JUDGE

16.07.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No