

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

102

1. CM No.11019-C of 2015 in/and
Regular Second Appeal No.4585 of 2015 (O&M)
Date of Decision: April 23rd, 2019
Prem Lata
...Appellant
Versus

Charitable Trust Lal Maternity Hospital, Amritsar and another
...Respondents

2. CM No.11299-C of 2015 in/and
Regular Second Appeal No.4691 of 2015 (O&M)
Prem Lata
...Appellant
Versus

Lady Emerson Seth Chaturbhuj Hospital, Amritsar
...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Chawla, Advocate
for the appellant (in both cases).

Mr. Rajesh Sethi, Advocate
for respondent No.1 (in RSA No.4585 of 2015)
and for the respondent (in RSA No.4691 of 2015).

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide two applications for condonation of delay filed in the two Regular Second Appeals as well as the appeals, one being CM No.11019-C of 2015 in/and RSA No.4585 of 2015 titled as *Prem Lata Versus Charitable Trust Lal Maternity Hospital, Amritsar and another* preferred by the appellant-plaintiff, where the suit filed by the appellant-plaintiff for declaration challenging the order orally communicated on 03.06.2006 passed by respondent No.2, Incharge, Lal Maternity Hospital, compulsorily retiring the appellant-plaintiff from service and directing her to vacate the quarter allotted to her by 02.07.2006, being illegal, *ultra vires*, capricious, arbitrary and inoperative and claiming

consequential benefits, has been dismissed by the Additional Civil Judge (Senior Division), Amritsar, vide judgment and decree dated 25.03.2013, appeal against which preferred by the appellant-plaintiff stands dismissed by the learned District Judge, Amritsar, on 11.07.2014 and CM No.11299-C of 2015 in/and *RSA No.4691 of 2015* titled as *Prem Lata Versus Lady Emerson Seth Chaturbhuj Hospital, Amritsar*, where a suit preferred by the Lady Emerson Seth Chaturbhuj Hospital, Amritsar-plaintiff-respondent for possession of quarter occupied by the appellant-defendant-Prem Lata, has been decreed by the Additional Civil Judge (Senior Division), Amritsar, vide judgment and decree dated 08.01.2014, appeal against which preferred by appellant-defendant-Prem Lata, has been dismissed by the Additional District Judge, Amritsar, vide judgment dated 09.12.2014 and these two appeals are being taken up together as they are inter-connected as decision of RSA No.4585 of 2015 will have direct impact and bearing upon the decision of RSA No.4691 of 2015.

2. There are two separate applications filed for condonation of delay of 266 days i.e. CM No.11019-C of 2015 in RSA No.4585 of 2015 and 92 days in RSA No.4691 of 2015 being CM No.11299-C of 2015 in filing the appeals and the reasons which have been given for the said delay is that there were financial constraints and, therefore, the appellant could not arrange the money to engage a counsel for filing the appeals.

3. The explanation which has been put forth for condonation of delay is not acceptable and, therefore, no ground is found for condoning the delay and, therefore, the appeals on this ground deserve to be dismissed as barred by limitation. Keeping in view the fact that the matter could be

resolved amicably, initially the appeals were entertained, however, on insistence of the counsel for the appellant, the matters have been gone into on merits as well.

4. As the appeals were heard on merits also so the same is being dealt with now. The facts which are not in dispute are that appellant-Prem Lata was appointed as a Nurse/*Dai* in Lal Maternity Hospital, which was earlier known as Seth Chaturbhuj Maternity Hospital in place of her mother Kishni, who left the job in August 1987. An order of termination was served upon the appellant on 03.06.2006, according to which she would retire on 02.07.2006 on attaining the age of 67 years. She was also directed to vacate the residential quarter by 02.07.2006. Appellant primarily based her claim challenging the order of her retirement on a school leaving certificate Exhibit P-3, according to which her date of birth was 15.07.1949 and was thus aged about 57 years at the time of passing of the order of her retirement. The said order, therefore, retiring her is not sustainable, whereas the stand of the respondent was that in the year 1987, when she was inducted into service in place of her mother Kishni, she was aged about 48 years and when she was ordered to retire, she was about 67 years of age.

5. On the basis of the evidence led by the parties, the trial Court came to the conclusion that the appellant-plaintiff had not been able to establish the fact that the order of retirement of the appellant-plaintiff was not in accordance with law and dismissed the suit of the appellant-plaintiff, appeal against which has been dismissed by the Lower Appellate Court.

6. The civil suit which has been preferred by the respondents

herein against the appellant for possession of the quarter which was allotted to the appellant in the light of the fact that she had retired from service on 02.07.2006 and, therefore, could not continue to stay there, was decreed and directions were issued to the appellant to hand over the vacant possession of the quarter, appeal preferred against the same stood dismissed by the Appellate Court leading to the filing of the present appeals.

7. It is the contention of learned counsel for the appellant that in the light of the school leaving certificate (Exhibit P-3), the date of birth of the appellant would be 15.07.1949 and, therefore, she was 53 years of age when the order of retirement was passed and, therefore, the said order cannot sustain.

8. This contention of learned counsel for the appellant cannot be accepted in the light of the admission in the cross-examination by Surinder Kumar, who appeared as PW-1 that Prem Lata was given job in place of her mother in the year 1987 in the respondent-hospital when her age was 48 years. The school leaving certificate which has been relied upon by the appellant has not been proved on record as nothing has been produced to show the basis for such preparation of the school leaving certificate. Mere production of a certificate would not be enough with regard to the authenticity of the said document. Further as per the service record, she was 67 years of age at the time of retirement and, therefore, the said order cannot be said to be illegal. The appeal, therefore, is without any merit.

9. As regards RSA No.4691 of 2015, in the light of the fact that

the order of retirement of the appellant has been found to be in accordance with law and admittedly the quarter has been allotted to her on her appointment in the hospital, she has no right to continue in the quarter. There is no illegality in the judgment and decree passed by the trial Court, which has been upheld by the Appellate Court.

10. It may be added here that on the last date of hearing i.e. 08.04.2019, after arguments, this Court found no ground to interfere in the appeals but keeping in view the fact that the appellant had been working with the respondent for quite some time and with an intention to resolve the dispute amicably, this Court had passed the order considering it to be just and equitable. The said order reads as follows:-

“Learned counsel for the parties to seek instructions with regard to the matter being amicably resolved wherein the appellant gives up her claim of appointment and challenge to the termination order and also vacate the quarters/premises within a period of one month from the next date of hearing and similarly, the respondent would permit the appellant to continue for a period of one month in the quarters/premises, which is in possession of the appellant without insisting upon any mesne profit.

List on 22.04.2019.

To be shown in the urgent list.

A photocopy of this order be placed on the connected case file.”

11. Today when the case was taken up for hearing, counsel for the appellant stated that he has not been able to convince the appellant for settlement of the matter amicably. The order dated 08.04.2019 was passed

with an intention and keeping in view the fact that assuming the date of birth of the appellant would be 15.07.1949, she would in any case be of 60 years of age on 15.07.2009 and would have retired on 31.07.2009 and she has been in possession of the quarter for about ten years after the date of her attaining the age of 60 years and, therefore, had to pay penal charges/mesne profits, but it appears that the appellant is in no mood to vacate the premises i.e. the quarter in her possession being held by her illegally, which admittedly was allotted to her on her appointment with the respondent. The *mala fides* and the ill intention of the appellant is writ large on the face of it as the conduct of the appellant speaks for itself.

12. In view of the above, both the appeals stand dismissed as barred by limitation as well as on merits.

13. In the light of the dismissal of the appeals, pending applications stand disposed of as infructuous.

April 23rd, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No