

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-14853-C of 2018 in/and
RSA No.5379 of 2018 (O&M)
Date of Decision : 28.11.2019

Balkar Singh

.....Appellant

Versus

Joginder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Dheeraj Mahajan, Advocate for the applicant-appellant.
None for the caveator.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 07.10.2013 and as even the appeal preferred against the said decree failed and was dismissed on 27.11.2015, he is before this Court in Regular Second Appeal.

Concededly, the appeal is barred by time, for, its suffers from a delay of 306 days. The only explanation to justify the delay that had occurred in filing the appeal, reads thus:-

“That the appellant is an illiterate person and was not well verse with the procedure for filing the appeal and the limitation for filing the same. The counsel for the appellant before the lower court did not guide the appellant with regard to the limitation of 90 days for filing the appeal before this Hon’ble Court and rather the appellant was guided he need not to do anything unless and until some case is filed by the respondent.

That the appellant accordingly did not preferred the appeal within the limitation period and when

the appellant through his known Mr. Inderjit Singh met the counsel for the appellant and showed him the relevant papers, it was only thereafter appellant came to know about the remedy of filing the appeal before this Hon'ble Court. It is respectfully submitted that as per the instructions of his counsel appellant contacted the trial Court counsel for arranging the papers of present RSA and after arranging the same appellant contacted his counsel before this Hon'ble Court on 07.02.2016 and after going through the record of Courts below the present RSA was drafted and by that time delay of 306 days has occurred in filing the appeal.”

Ex facie, the explanation sought to be tendered lacks bonafides.

Concededly, the applicant being conscious of his rights and interest had filed the present suit and after it was dismissed he even assailed the said decree by way of appeal before the first Appellate Court. Thus, the only explanation that applicant being an illiterate person, was not well verse with the procedure and the limitation within which the appeal was supposed to be filed, is palpably false and concocted. Likewise, it defies logic that after dismissal of the appeal on 27.11.2015, his counsel advised him **“rather the appellant was guided he need not to do anything unless and until some case is filed by the respondent”**. Still further, as per the case of the applicant himself, he had collected the necessary documents and the records from his counsel before the trial Court on 07.02.2016, whereas the present appeal was filed on 28.02.2017. The application is bereft of any explanation, if once the records were collected in February 2016, itself, what stopped the applicant to file the appeal for over a year thereafter. Rather, it appears that having lost before both the Courts, the applicant reconciled with

his fate and accepted the impugned judgment and decree. Thus, the accompanying appeal appears to be merely speculative and an afterthought. Needless to assert that impugned judgment and decree dated 27.11.2015, was passed by the Appellate Court, over 4 years ago, and in the interregnum certain valuable rights have also accrued in favour of the non-applicant/defendant. It would be apposite, at this stage, even to refer to the decision of the Hon'ble Supreme Court in **P.K.Ramchandran Vs. State of Kerala and Anr., AIR 1998 Supreme Court 2276**, wherein it was concluded that law of limitation may harshly affect a particular party but it has to be applied with all its rigour prescribed by statute and the Courts have no power to extend period of limitation on equitable grounds. Likewise, in **N. Balakrishnan Vs. M. Krishnamurthy, (1998) 7 SCC 123**, the Supreme Court had observed that object of fixing the time limit under the Limitation Act is not with purpose to destroy right of the parties but it is founded on public policy. It had been further observed that length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. However, as demonstrated hereinabove, the grounds set out in the application do not constitute sufficient cause to condone the gross, inordinate and unexplained delay of 306 days. Needless to assert that courts of law always yearn and endeavour to decide the *lis* on merits, unless a party owing to its negligence, inaction, willful and deliberate default, deprives itself of such indulgence. Unfortunately, such is the position in the matter at hands.

Accordingly, the application is dismissed. Consequently, the appeal is also dismissed as barred by limitation.

28.11.2019
Manoj Bhutani

Whether speaking/reasoned
Whether reportable

(ARUN PALLI)
JUDGE
Yes/No
Yes/No