

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

RSA No.5970 of 2018(O&M)
Date of decision: 23.09.2019

Parshotam Bansal

... Appellant

Versus

Om Parkash and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Govind Chauhan, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court vide judgment and decree dated 01.12.2012, and as even the appeal preferred against the said decree failed and was dismissed by the appellate court on 29.07.2016, he is before this Court in Regular Second Appeal.

Concededly, the appeal is barred by 549 days and is accompanied by an application under Section 5 of the Limitation Act. All what has been urged by the applicant-appellant in paragraph 2 of the application to condone the delay that has occurred is: “...*after passing of the impugned judgment and decree of the learned lower appellate court, the appellant was not informed about the decision of the case by his counsel before the learned lower appellate court. This fact was only came to the knowledge of the appellant, when he met his counsel on 5.4.2018. Thereafter the appellant received all the relevant documents and certified copy of the impugned judgment and decree from his counsel.*”

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

In brief, the case set out by the applicant is that his counsel never apprised him of the decision of his appeal. It is wholly incredible that nearly for a period of two years i.e. from 29.07.2016, when the appeal was dismissed, till 05.04.2018, the date when the applicant allegedly acquired knowledge that his appeal was dismissed, even the applicant never cared to check even once either with his counsel or his office staff the fate of his appeal. The appeal was filed by the applicant on 07.05.2013 and was dismissed by the first appellate court on 29.07.2016, nothing is stated in the application either if even during this period the applicant never contacted his counsel or ascertained the status of his appeal. A copy of the judgment and decree rendered by the first appellate court reveals that application to obtain the certified copy of the judgment was moved on 30.07.2016, which was prepared on 04.08.2016 and delivered on 06.08.2016. That being so, it rather defies logic that despite having obtained the certified copy, almost immediately, the counsel for the applicant still did not care to apprise him of the decision in the appeal. There is nothing on record to indicate that applicant being aggrieved made any complaint against his counsel, which could lend some credibility to his version. Not just that, how and under what circumstances, the applicant all of a sudden, that too after almost two years of the dismissal of the appeal met his counsel on 05.04.2018, remains a mystery. Thus, the assertions made in the application are concocted. The institution of this appeal appears to be speculative and an afterthought. In the given situation, the only and the inevitable conclusion the Court could reach is: the application lacks bonafides and the explanation rendered to explain the gross, inordinate and unexplained delay do not constitute a sufficient

cause. Reliance in this regard is placed upon a decision of the Hon'ble Supreme Court in Estate Officer, Haryana Urban Development Authority & Anr. v. Gopi Chand Atreja, 2019(2) RCR (Civil) 602. Accordingly, the application is dismissed. Consequently the appeal is also dismissed as barred by limitation.

23.09.2019
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO