

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

**CM-17042-C of 2018 in/&
RSA No.6115 of 2018 (O&M)
Date of Decision : 01.10.2019**

Gahra Singh and another

.....Appellants

Versus

Gopal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Rahul Arora, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by plaintiff/respondent-Gopal Singh was decreed by the trial Court vide judgment and decree dated 26.03.2012, and as even the appeal preferred against the said decree failed and was dismissed on 30.11.2013, defendants No.2 and 3 are before this Court in Regular Second Appeal.

Concededly, the appeal is barred by 1455 days i.e. almost 4 years. The only explanation, the applicants have tendered to justify the delay that had occurred in filing the appeal is set out in paragraphs 2 to 4 of the application which reads thus:-

**“2. That the reason for filing the accompany
appeal beyond the period of limitation is not intentional but
bonafide as stated therein blow. It is submitted that
applicants-appellants have been coming into possession of**

the houses constructed over the suit land since long and was not aware of the fate of the appeal filed by them alongwith Kashmir Singh and Inder Singh which was decided on 30.11.2013. In fact the appellants were under mistaken belief that suit with regard to the constructed houses over the suit land has been decided in their favour and it is only in the month of January 2018 when the appellants/applicants came to know that in fact suit has been decreed and their appeal thereof had been dismissed. It is pertinent to mention here that it is in fact Kashmir Singh son of Thakar Singh who had been contesting the suit and proceedings with Gopal Singh plaintiff.

3. That it is only in the month of January 2018 when attachment proceedings initiated against the applicants/appellants, they inquired into the proceedings from the Courts at Fazilka and came to know regarding the adverse orders passed against them and thereafter instructed the counsel at Fazilka to apply for certified copies and to get the relevant record concerning the case file.

4. That immediately on getting the requisite copies, the applicants/appellants approached the counsel at Chandgiarh to file an appeal before this Hon'ble Court.”

Ex facie, the application lacks bonafides. The case sought to be set out by the applicants is that they were under a mistaken belief that their suit with regard to constructed houses over the suit land had been decided in their favour. Apparently, these assertions are false, for, being aggrieved by the judgment and decree, rendered by the trial Court, the applicants assailed the same by way of appeal. Further, their version that they

acquired knowledge of the dismissal of their appeal in January 2018, is wholly incredible. Nothing is stated in the application if during this long period of 5 years from 30.11.2013, when the appeal was dismissed till January 2018, the date of knowledge, they did not even once check with their counsel or his office staff regarding the status of their appeal. Though, it is pleaded that only Kashmir Singh son of Thakar Singh, one of the co-defendants was pursuing the appeal but again it is not their case that even Kashmir Singh never apprised the applicants of the dismissal of the appeal on 30.11.2013. Significantly, the applicants are consciously quiet if even their counsel or his clerk never informed them of the decision in the appeal all these years. The plea that it was only after the attachment proceedings were initiated the applicants got to know that their appeal had since been dismissed, does not inspire confidence. Rather, it is apparent that the present appeal has been filed to thwart those proceedings, if any, thus, the appeal at hands is only speculative and has been filed as an afterthought.

In the wake of the above, the only and the inevitable conclusion that could be reached: the application lacks bonafides and the grounds set out therein do not constitute a sufficient cause to condone the gross, inordinate and un-explained delay of 1455 days. Further, a valuable right has accrued to the respondent-plaintiff owing to the conscious inaction at the end of the applicants.

Reliance 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, in this regard.
Accordingly, the application is dismissed. Consequently, the appeal is also dismissed being barred by limitation.

01.10.2019
Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No