

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

CM No.18648-C of 2018 in/and
RSA No.9625 of 2018(O&M)
Date of decision: 02.12.2019

Kakko Bai (deceased) through LRs

... Appellant

Versus

Nishan Singh and others

... Respondents

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

Present: Mr. G.L. Bajaj, Advocate, for the applicant-appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 19.09.2014, and as even the appeal preferred against the said decree failed and was dismissed on 22.09.2015, she is before this Court in Regular Second Appeal.

Concededly, the appeal is barred by time, for, it suffers from a delay of 883 days. The only explanation to justify the delay that had occurred in filing the appeal, reads thus:

“2. That after obtaining the certified copy of the impugned judgment and decree dated 22.9.2015, the appellant fell ill, moreso she being lady residing in remote rural area could not arrange the funds for filing the appeal before this Hon’ble Court but now she has recovered from her illness and also arranged some money for filing the present appeal as such delay of 883 days has been occurred in filing the appeal.”

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

Nothing is brought on record to even remotely indicate as when did the applicant fall ill, what kind of ailment she was suffering from, or if she was subjected to any treatment. Necessary documents/ records/ doctor's prescription, to lend credence to the applicant's version, have not been appended with the application either. Likewise, the assertions that applicant, who happens to be a lady, was residing in a remote rural area and, thus, could not even arrange funds to file the appeal, are also palpably false and concocted. It would be apposite to point out that applicant being conscious of her rights and interest had filed the present suit and after it was dismissed she even assailed the said decree by way of appeal before the first appellate Court. Therefore, for her to plead that she being a lady and as she was residing in a remote rural area, suffered from some sort of inability to assail the impugned judgment and decree is apparently erroneous. Likewise, the plea as regards lack of funds is vague, uncertain and lacks material particulars. Nothing is averred as to what sort of financial crisis she was faced with, and how all of sudden after over two years she could manage to file the present appeal. Rather, it appears that having lost before both the courts, the applicant reconciled with her fate and accepted the impugned judgment and decree. Thus, the accompanying appeal appears to be merely speculative and an afterthought. Needless to assert that the impugned judgment and decree dated 22.09.2015 was passed by the appellate court over four 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 rigor prescribed by statute and the Courts have no power to extend period of limitation on equitable grounds. Likewise, even 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 more than two years. 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.

02.12.2019
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO