

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

RSA No.1700 of 2018(O&M)
Date of decision: 22.10.2019

Fateh Singh S/o Umrao Singh (since deceased) through his LRs

... Appellant

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Tara Chand Dhanwal, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff for declaration, assailing the order dated 30.03.1994, passed by the then Collector, Hisar, vide which the services of late Fateh Singh Patwari (plaintiff) were terminated, as also the order passed by the Commissioner, Hisar Division, Hisar, affirming the termination, being illegal and void, was dismissed by the trial Court vide judgment and decree dated 29.04.2013. And as even the appeal preferred against the said decree failed and was dismissed on 08.05.2015, the LRs of the appellant-plaintiff are before this Court in Regular Second Appeal.

Concededly, the appeal is barred by time for, it suffers from a delay of 692 days. The only justification to condone the delay that had occurred is:

***“2. That the learned District Judge, Hisar dismissed
the Appeal of the appellant Fateh Singh S/o Umrao***

Singh on 08.05.2015 and the limitation for filing of appeal was upto 06.08.2015.

3. That after passing of the order dated 08.05.2015, the said Fateh Singh, i.e. Husband and Father of the appellants requested the counsel at Hisar to send papers at Chandigarh to the Advocate of his choice to file the appeal before this Hon'ble Court. And after that he fell ill and could not pursue the matter further. And ultimately he died on 13.03.2017 due to his long illness.

4. That after the death of said Fateh Singh the Legal Representatives enquired the status of the appeal from the counsel at Hisar. Then it came to their knowledge that the appeal could not be file in the High Court."

Ex-facie, the explanation sought to be tendered lacks bonafides. Apparently, it defies logic that plaintiff who being conscious of his rights, filed a suit assailing his termination and post dismissal of the suit even filed an appeal, but for assailing the impugned judgment and decree, entrusted the matter to his counsel in the District Court without even caring to know the counsel who was being engaged to file an appeal. Not just that, after dismissal of the appeal on 08.05.2015 till March, 2017, nearly for a period of 2 years, when the applicants allegedly inquired the status of the appeal from their counsel at Hisar, neither late Fateh Singh nor any of his heirs cared to check even once if the appeal was actually instituted, the particulars of the counsel, and the status of the proceedings, if any. Albeit, it is pleaded that

Fateh Singh fell ill, whereafter he passed away on 13.03.2017, but nothing is brought on record to show if he ever suffered from any illness. Significantly, he remained alive for almost two years after dismissal of the appeal so this was not a case either where the plaintiff died during or immediately after the decision of the appeal and his heirs were not aware of any court proceedings. Unfortunately though: Fateh Singh passed away on 13.03.2017, but it appears that post dismissal of his suit as also the appeal on 08.05.2015, he reconciled with his fate and accepted the impugned judgment and decree and chose not to pursue the matter any further. Thus, institution of the present appeal appears to be merely speculative and an afterthought. Needless to assert that impugned judgment and decree, dated 8.5.2015, was passed by the appellate court over four years ago, and in the interregnum, certain valuable rights have also accrued and come to vest in favour of the other side. It would be apposite, at this stage, even to refer to the decision of the Hon'ble Supreme Court in **P.R. Ramchandran Vs. State of Kerala and Anr., AIR 1998 Supreme Court 2276**, wherein it was concluded that law of limitation may hardly 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, 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 nearly 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.

(Arun Palli)
Judge

22.10.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO