

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 947 of 2020

Date of Decision: 10.02.2020

Ashok Kumar

.....Petitioner

Vs.

Madan Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Siddharth Gupa, Advocate, for
Mr. Naina Issar, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order passed by learned Additional District Judge, Jalandhar, on 13.02.2019, dismissing the application filed by him under Section 5 of the Limitation Act, 1963, seeking that the delay of 551 days in filing the appeal against the judgment and decree dated 11.08.2015, passed by the trial court against him, be condoned.

Notice having been issued in that application, defendant no. 1 in the suit, i.e. respondent no. 1 in the appeal before the Additional District Judge, filed a written reply to the application taking a preliminary objection of maintainability and further stating that no medical record had been produced by the present petitioner (applicant-appellant before the appellate court), to support his contention that the delay occurred due to his illness.

On merits, it was contended that the present petitioner had also filed another suit with regard to the same property before the civil court at Jalandhar, claiming the same relief, as he was claiming in the suit in the present *lis*, and

consequently a 2nd suit in any case was not maintainable.

On the aforesaid pleadings in the application, the following issues were framed by the appellate court:-

- “1. Whether there are sufficient ground to condone the delay in filing the appeal? OPA*
- 2. Whether application of applicant is not maintainable in its present form? OPR*
- 3. Relief.”*

The petitioner herein examined three witnesses, including himself, with the first respondent in the appeal (respondent no. 1 in this petition also), having only examined himself.

Upon examining the pleadings and the evidence led by the parties, the learned appellate court came to the conclusion that though the petitioners' contention was that he had remained sick and had been admitted in the hospital, the medical record produced by him as marked documents, pertaining to him suffering from diabetes, hypertension as also having undergone coronary angiography and a bypass surgery, were all pertaining to December 2014, with him having been advised bed rest for a period of 03 months starting from 01.01.2015.

The trial court had in fact decided the suit in question only thereafter, on 11.08.2015, with no evidence led at all as regards any treatment undergone by the petitioner between that date till the filing of the appeal in question on 22.03.2017.

It was also recorded that in an ejectment petition filed against the petitioner by one Mohinder Kaur in July 2015, he admitted to have appeared before that court, with him also having filed a written statement, with the written statement having been prepared under his instructions in the court complex itself, as also admitted by him.

He also admitted to appearing continuously in that case.

Consequently, it was found, vide the impugned order, that with no evidence led to substantiate the contention that the appeal had been filed after a delay of 551 days on account of the illness of the petitioner, the application seeking condonation of delay, as also naturally the appeal itself, were dismissed.

The other reason given by the learned Additional District Judge for dismissing the application and appeal of the present petitioner, is that he had not placed on record any complaint filed by him against his counsel who allegedly had misguided him with regard to the filing of the appeal, whereas actually it had not been filed.

Before this court, learned counsel for the petitioner submits that the finding recorded in the impugned order to the effect that the petitioner had himself got the written statement prepared in the court complex, in the ejectment petition filed against him, is a wholly erroneous/perverse finding, in view of the fact that the petitioners' testimony to that effect in his cross-examination was that he did not remember as to whether it had been prepared in the court complex or in the office of his counsel.

He further submits that as regards the non-filing of a complaint against the petitioners' Advocate, he did not do so fearing that it might have had an effect on his other cases, he being involved in multifarious litigation in the same court, i.e. the District Courts, Jalandhar, and consequently, that fact should have been duly taken into account by the learned appellate court.

Having considered the arguments, I find myself unable to interfere with the impugned order, in view of the fact that, firstly, as regards the petitioner not having filed any complaint against his Advocate and yet insisting that it was on account of him being misguided by the previous Advocate to the effect that the

appeal had been filed, it is not believable that if such a complaint was filed, no other Advocate would pursue his other cases.

That apart, even if that contention was to be accepted at face value, to the effect that his previous lawyer had misguided him, the fact that the petitioner obviously did not bother to check on the fate of the appeal for 551 days, does not substantiate his contention to that effect either, in my opinion.

As regards the petitioner being sick and on that account not having been able to file the appeal, nothing further needs to be said, in view of the fact that admittedly no evidence beyond January 2015 was produced to show that he was suffering from any illness on account of which he could not pursue the appeal, especially in view of the fact that he was defending his ejectment petition and though learned counsel may be correct to the extent that his testimony was not to the effect that he had got the written statement in that case prepared in the court complex and that it may have been prepared in his counsels' office, that would make no difference, because if he was getting a written statement prepared whether in the court complex or in the lawyers' chambers, the fact is that he was obviously not medically unfit to pursue his cases.

Though this court is not otherwise required to comment on the main issue in the appeal that has been dismissed, however, in view of the fact that if a litigant has otherwise a sound case and the dismissal of an appeal would amount to travesty of justice, delay can be condoned, it is necessary to notice that a perusal of the judgment of the trial court, dismissing the suit of the petitioner (plaintiff) also shows that the suit being one seeking partition of the suit property, as regards one part of that property it was stated to have been a jointly owned property by the petitioners' father and his four brothers, with no evidence having been led that there was a partition at an earlier stage qua that property; and consequently, in the

opinion of this court, it would amount to non-joinder of necessary parties, with only the petitioners' own siblings having been impleaded as respondents in the suit, without impleading his fathers' brother/their legal heirs; and as regards the two other parts of the property as were sought to be partitioned, the contesting defendants in the current *lis* had led by way of evidence two sale deeds showing transfer of those properties in 1979 and 1988, with the transferees of those properties not having been impleaded as parties in the suit in the present *lis*.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

February 10, 2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes