

In the High Court of Punjab and Haryana at Chandigarh

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RSA-604-2020 (O & M)

Date of Decision: February 11, 2020

ATUL TEJWANI

....APPELLANT

VERSUS

SIRAJUDDIN KHAN

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Rohit Sharma, Advocate and
Mr. Abhinav Sood, Advocate for the appellant.

ANUPINDER SINGH GREWAL, J (ORAL)

The appellant is aggrieved by the judgment and decree dated 26.04.2018 whereby suit of the plaintiff-respondent has been ex parte decreed and the appeal along with the application for condonation of delay has also been dismissed by order dated 05.12.2019.

Learned counsel for the appellant contends that the appeal of the appellant has been erroneously dismissed on the ground of delay. The appellant had been proceeded ex parte and he did not have knowledge of the dismissal of his application under Order 9 Rule 13 CPC as he was not informed by his counsel about the proceedings. He learnt about the same only on receiving warrants from the Executing Court. He also contends that it would be in the

interest of justice if the delay in preferring the application before the Appellate Court is condoned and the appeal of the appellant is heard and decided on merits.

Heard.

The respondent-plaintiff had filed a suit for recovery in July, 2015 seeking a decree of ₹60,000/- along with interest at the rate of 14 per cent per annum from the date of completion of the work of painting the flat owned by the defendant-appellant. The work order which is addressed to the respondent-plaintiff and bears the date 17.05.2014 indicates that schedule of payment had to be adhered to.

It was further pleaded by the respondent-plaintiff that although he had carried out the work, the entire payment had not been made except for a sum of ₹30,000/- which had been paid on 18.05.2014 and a receipt had been duly issued by the respondent-plaintiff in that regard. The appellant-defendant was duly served and had filed his written statement on 24.10.2016. He thereafter filed an application under Order 7 Rule 11 CPC for dismissal of the suit which was declined by the trial Court on 09.01.2017. The case had thereafter been adjourned on one pretext or the other and on 15.03.2018 last opportunity was accorded to the appellant-defendant to lead evidence and the case was adjourned to 02.04.2018. On 02.04.2018 no one had put in appearance on behalf of the appellant and, therefore, the Court proceeded ex parte against him and an ex parte decree was passed on 26.04.2018. The application preferred by the appellant under Order 9 Rule 13 CPC for setting aside ex parte decree was dismissed on 06.03.2019 which was challenged in appeal which had been declined by the impugned order on 05.12.2019.

It is, thus, manifest that the appellant had been duly served in the proceedings, he had filed his written statement and had been duly represented by his counsel till 02.04.2018 whereon he was proceeded ex parte. After the dismissal of the application for setting aside ex parte order, he had filed the appeal along with an application for condonation of delay of about six months in preferring the appeal. I am in agreement with the reasoning adopted by the Appellate Court that the conduct of the appellant has been to delay the proceedings which had been initiated by the respondent-plaintiff. Despite having been granted several opportunities to lead his evidence, he did not do so and was proceeded against ex parte. No worthwhile explanation has been putforth which could be accepted by this Court with regard to the delay on behalf of the appellant in preferring the appeal before the Appellate Court.

It is apt to notice that the work order for a sum of ₹90,000/- which had been issued to the respondent-plaintiff is on record and a receipt of ₹30,000/- had been appended with the plaint but the appellant even though had filed his written statement and had been granted adequate opportunities to lead his evidence, could not place on record any receipt to indicate that he had paid the rest of the money or that on failure of the respondent-plaintiff to execute the work, the work was executed through another painter. No receipt with regard to the expenditure incurred by the appellant with regard to the execution of the work consequent upon the abandoning of the work by the respondent-plaintiff had also been produced. There is no reference to any communication or notice sent by appellant to respondent to complete the work.

In the aforementioned facts and circumstances, I do not find any good ground to interfere in the impugned order declining the application of the

appellant for condonation of delay and dismissing the appeal.

The appeal stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

February 11, 2020
A.Kaundal

Whether speaking/ reasoned	:	Yes/No
Whether Reportable	:	Yes/No