

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

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**CR-2284-2020 (O&M)
Decided on : 21.09.2020**

Sh.Laxmi Narayan (since deceased) through LRs ... Petitioners

Versus

Municipal Council Rewari & others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.R.D.Gupta, Advocate
& Mr.Kabir Sarin, Advocate, for the petitioners.

Mr.Deepak Manchanda, Advocate, for respondent No.1.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present revision petition, filed under Article 227 of the Constitution of India, is directed against the order dated 21.08.2020 (Annexure P-1), passed by the Addl.District Judge, Rewari whereby the application for condoning the delay of 823 days in filing the appeal, had been dismissed.

Counsel for the petitioners has vehemently argued that the appeal was filed by the predecessor-in-interest of the petitioners, Shri Laxmi Narayan, who expired during the pendency of the appeal. He was not well and taking treatment at the PGI, Rohtak and therefore, could not file the appeal within the prescribed period of limitation. Another argument which has been raised is that now the respondents have threatened to demolish the construction of the petitioners. Notice had been issued on 27.07.2020 and the fact was admitted in the reply in the application filed under Section 5 of the Limitation Act, 1963 and therefore, the cause of action arose when the notice was received.

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The reasoning which prevailed with the Lower Appellate Court for dismissing the application was that sufficient cause should receive a liberal construction so as to advance substantial justice. It was held that when the delay is not on account of any dilatory tactics but when not bona fide or there is deliberate inaction or negligence on the part of the applicant, the same is not liable to be condoned. Accordingly, it was noticed that there were other plaintiffs also whose address have been shown qua the property which is subject matter of dispute bearing House No.4616, near Bus Stand, Circular Road, Rewari. It was, thus, held that even if the predecessor-in-interest of the petitioners, namely, Laxmi Narayan was unwell, the other plaintiffs could have also challenged the order impugned. Affidavit of the counsel had also not been attached since a plea was taken that the counsel had not informed the said appellant about the order. It was, accordingly, held that the other plaintiffs were also taking advantage of the illness of the applicant, to get the delay condoned.

A perusal of the paperbook would go on to show that the suit for permanent injunction was filed by the 3 plaintiffs including the predecessor-in-interest of the petitioners who was plaintiff No.3. Even in the present Memo of Parties, the address is shown as House No.4616, near Bus Stand, Circular Road, Rewari of the plaintiffs No.1 & 2 who are now arrayed as respondents No.2 ;& 3, which is the disputed property which is of 4 shops. The injunction had been declined wayback on 19.04.2018 (Annexure P-5) by the Trial Court by noting that there was also other litigation initiated by Kailash Saini against the Municipal Committee, who is stated to be the son of Smt.Saroj Bala,

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plaintiff No.1. The removal of the encroachment had been asked over the common rasta. It was noticed that the site-plan in the earlier suit showed that there was encroachment of Laxmi Narayan on the common passage. The site-plan filed by the present plaintiffs however showed no construction over the common passage. Resultantly, it was held that the balance of convenience did not fall in favour of the plaintiffs and injunction was not granted.

It is also to be noticed that the predecessor-in-interest of the petitioners had got a interim order dated 31.05.2019 (Annexure P-6) in his favour in CR-3775-2019 whereby the proceedings before the Trial Court had been directed to be adjourned beyond the date fixed by this Court and the matter is stated to be pending. The same has allegedly arisen out of a interim order passed by the Trial Court in not appointing a Local Commissioner. It is, thus, apparent that on the strength of having getting the proceedings deferred before the Trial Court, the application for injunction is sought to be brought into force by seeking the condonation of delay of 823 days.

In such circumstances, this Court is of the opinion that no sufficient cause was made out to condone the delay and the findings recorded by the Lower Appellate Court are well justified as the interest of the plaintiffs was common. If one of the plaintiffs was not available to file the appeal on account of his illness, the other set of plaintiffs could have filed the appeal within the prescribed period of limitation. The delay is inordinate and there is negligence on the part of the plaintiffs in pursuing their remedy since for over a period of 2 years and 3 months and the appeal was not filed. Merely because a demolition notice had thereafter been issued on 27.07.2020, would not

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condone the negligence of the petitioners or give a fresh cause to agitate for the condonation of delay on that ground. The petitioners' predecessor-in-interest was well aware that their suit was pending and did not get the interim protection. It was for him to ensure that the appeal was filed within the prescribed period or at least within reasonable delay.

Accordingly, no ground is made out to condone the inordinate delay and negligence on the part of the petitioners who chose to sleep over their rights and thus, have lost their statutory right to file the appeal. The order of the Lower Appellate Court cannot be stated to be suffering from any infirmity or illegality which would warrant interference under Article 227 of the Constitution of India, by invoking the supervisory powers of superintendence. Accordingly, the present revision petition is dismissed in limine.

**(G.S. SANDHAWALIA)
JUDGE**

SEPTEMBER 21, 2020
sailesh

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No