

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-590-2020

Date of Decision:28.1.2020

Surinder Kaur

...Petitioner

Versus

Umrao Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.P.S.Punia, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. Prayer in this petition is for setting aside the order dated 1.7.2019 (Annex.P1), passed by the Additional District Judge, Fatehgarh Sahib, whereby application of the petitioner under Section 5 of the Limitation Act for condonation of delay has been dismissed for delay in presenting the appeal against the decree passed by the trial court against the successful party.

2. Heard and perused the papers.

3. I do not find any infirmity in the reasons recorded by the learned Additional District Judge, Fatehgarh Sahib, in dismissing the application under Section 5 of the Limitation Act, 1963, refusing to condone the delay of 108 days in filing the first appeal under Section 96 of the Code of Civil Procedure, 1908. In the appeal, the concluding reasoning recorded in the order dated 1.7.2019, in para No.13 is recorded as follows:

The Court has sufficient reason to believe that the applicant has concocted a false story about being dissuaded and misguided by her counsel for keeping her

ignorant about the impugned order dated 21.12.2015. There is a serious and prolonged delay of 108 days which has not been explained. This Court is of the confirmed and considered view that in the instant case sufficient cause has not been explained by the applicant to the satisfaction of the court. She has slept over the matter for the reasons best known to her apparently to frustrate the plaintiff in reaping the fruits of the judgment and decree dated 5.2.2013. It was the duty of the applicant to be vigilant about her case. The law is not to be applied at the whims and fancies of such like negligent parties who sleep over their rights and deliberately allowed their remedies to be exhausted by limitation.

4. I have no reason to substitute my opinion with the discretion exercised by the appellate Court judicially in consideration of the application under Section 5 of the Limitation Act. The application is not on file but has been taken from the learned counsel at the time of arguments from his case file, copy of which is retained on record. In para No.2 of the application, the reasons for condoning the delay have been assigned as follows:

That there is a delay of 108 days for filing the present appeal because the previous counsel of the applicant namely Sh.K.C.Malhotra Advocate did not disclose the applicant regarding the passing of the judgment dated 21.12.2015. The applicant came to know regarding the passing of the judgment dated 21.12.2015 only on 5.5.2016 when the appellant engaged another counsel and made inquiry regarding the further proceedings of the application u/o 9 Rule 13 read with Section 151 CPF but to the surprise of the appellant when after inquiry, he came to know that the said application u/o

9 Rule 13 read with Section 151 CPC has been dismissed in default u/o 17 Rule 3 CPC on 21.12.2015. Then the appellant immediately applied for the certified copy of the same on the same day i.e. on 5.5.2016, which was prepared on 9.5.2016 and the same was delivered to the appellant on 12.5.2016. The delay in filing the appeal is bona fide. Whereas the case of the applicant is very strong on merits. It is settled proposition of law that if the case is otherwise strong on merits and a serious point of law is involved and having arguable points of law, then the delay can be condoned and the case cannot be dismissed merely on the ground of technicalities of limitation. It is well settled law that a party should not be burdened due to the negligence of her/his counsel.”

5. With this application in hand, supported by an affidavit, the appellate Court did not commit any error in declining it being short of the measurements required under Section 5 of the Limitation Act to explain sufficient cause which prevented appellant from presenting appeal before the expiry of limitation. It may be recorded that the petitioner is a vendor in a suit for possession by way of specific performance on a contract of sale of immovable property.

6. The suit was filed in 2013. For non-appearance the plaintiff was proceeded ex parte by order. An ex parte decree was passed on 5.2.2013. The application under Order 9 Rule 13 CPC was dismissed by resort to Order 17 Rule 3 CPC on 21.12.2015, since no evidence was produced by the petitioner.

7. No valid ground is made out to interfere in the impugned order of 1.7.2019 passed by the Additional District Judge, Fatehgarh Sahib. As far as the vendor is concerned, rights under the decree have accrued to him,

sanguine that the appeal has not been filed attaching finality to the case.

8. The petition is accordingly dismissed.

January 28, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No