

In the High Court of Punjab and Haryana at Chandigarh

RSA- 5129 of 2019 (O&M)

Date of Decision:5.2.2020

Mam Chand (since deceased) represented by his Lrs.

---Appellant

versus

Hari Pal deceased through his Lrs

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Satnam Sishodia, Advocate
for Mr. Sandeep Antehri, Advocate
for the appellants**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration with consequential relief of joint possession and permanent injunction in respect of land measuring 43 kanal 4 marlas, was dismissed by the trial court and judgment of trial court was affirmed in appeal by the Additional District Judge, Yamuna Nagat at Jagadhri.

Along with the appeal, application by invoking Section 5 of the Limitation Act seeking condonation of delay of 964 days in filing the appeal, has been filed. A relevant extract from para 2 of the application reads thus:-

“That applicants-appellants have engaged the present counsel for filing of the present Regular Second Appeal

within time period which is prescribed by law and that time the office of the engaged counsel was under renovation and file was mixed up in the decided cases, when the applicants-appellants called the engaged counsel for knowing the status of their case at that time counsel checked the status of the present Regular Second Appeal and found that the Regular Second appeal has not been filed and due to this reason the delay of 964 days occurred in filing the present Regular Second Appeal.”

Counsel for the applicant-appellant would submit that delay in filing the appeal is neither intentional nor mala fide but due to the reasons stated in para 2 of the application. It is further argued that delay should not be allowed to stand in the way of decision on merits as technical consideration or procedural lapse can not be permitted to be pitted against substantive right of a party.

I have heard counsel for the applicant-appellant and perused the application particularly para 2 thereof, extracted hereinbefore.

Section 5 of the Limitation Act provides for extension of prescribed period in certain cases. A relevant extract therefrom reads as under:-

“Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not

preferring the appeal or making the application within
such period.”

The plea of the applicant-appellant is that they engaged the present counsel for filing the appeal within prescribed period but the file was mixed up in the decided cases and the appeal could not be filed within prescribed period. It is surprising rather shocking that a litigant would not know fate of his case for a long period of approximately three years. The plea sought to be raised for condoning delay in filing is usually raised for condonation of delay in refiling the appeal. In this view of the matter, I find myself unable to accept contention of the applicant that a case is made out to prove that he had sufficient cause for not filing appeal without delay of 964 days. That being so, the application is without merit and accordingly dismissed. As a natural consequence, the appeal is dismissed being barred by limitation.

(Rekha Mittal)
Judge

5.2.2020

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No