

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

RSA No.5354 of 2019(O&M)

Date of decision: 9.1.2020

Narinder Singh

.....Appellant

VERSUS

Amrik Singh Dhillon

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Prateek Sodhi, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery was decreed by the trial Court vide decree and judgment dated 19.09.2012 and appeal preferred by unsuccessful defendant/appellant came to be dismissed by the District Judge, Amritsar vide decree and judgment dated 09.12.2013.

Along with the appeal, an application by invoking Section 5 of the Limitation Act, 1963 for condonation of delay of 2076 days in filing the appeal has been filed. Counsel for the applicant-appellant, in line, with the averments raised in the application would argue that delay in filing the appeal is neither intentional nor mala fide but due to the circumstance set-forth in para 2 of the application that parties entered into mutual parleys for settling the dispute. It is further argued that a serious prejudice would be caused to the applicant-appellant in case delay is not condoned and appeal is not heard on merits. The last submission made by counsel is that the

Courts have consistently held that a liberal approach is required to be adopted while condoning delay so that substantial justice and technical consideration are not pitted against each other.

I have heard counsel for the applicant-appellant and perused averments made in the application supported by an affidavit of applicant-Narinder Singh.

Before advertng to the submissions made by counsel for the applicant, it is appropriate to extract the averments raised in para 2 of the application, reads thus:-

“2. That it is a matter of record that the Ld. Appellate Court had dismissed the Appeal vide judgment and decree dated December 9, 2013. Apparently thereafter compromise talks had been going on inter se the parties and the same had even been almost finalized between the parties. The aforesaid fact is evident from the perusal of the records, which would reveal that even the Respondent did not prefer the execution petition immediately. Apparently, on failure of compromise talks, the Respondent had filed the execution petition. However, the same got dismissed in default on January 8, 2016. Subsequently it is on December 15, 2018 that the same got restored. The Appellant, on restoration of the same, had been again engaged in compromise talks with the Respondent. It is only in the month of September, 2019 that the Respondent had flatly refused to compromise the case, that the Appellant approached his counsel for filing the appeal. Thereafter, upon collating the necessary documents, that the accompanying

appeal could be prepared and preferred at the earliest possible occasion. As such delay had occurred in filing the Appeal on account of aforesaid reasons.”

The applicant has raised the plea that talks of compromise had been going on and the same had even reached the stage of finalization and for that reason, the respondent/plaintiff did not file execution petition immediately. Later, he filed application for execution which was dismissed in default on 08.01.2016 and got restored on 15.12.2018. Subsequent thereto, there were again talks of compromise between the parties and finally the respondent refused to settle the dispute in September 2019. It is difficult to digest that if earlier talks of compromise despite having reached the stage of finality before filing of execution application by the respondent could not fructify in a settlement, where was the reason for the parties to again engage in compromise talks or the appellant to wait for filing of appeal despite the fact that the respondent/plaintiff had filed an application for execution of the decree. That being so, in my considered opinion, averments raised by the applicant-appellant are nothing but a clever attempt to avoid implications of inordinate delay of more than 5 years in filing the appeal.

As per the settled position in law, the party who sleeps over his rights and is not diligent in pursuing his remedy is not entitled to seek indulgence of the Court particularly in the circumstances that both the Courts have recorded consistent findings allowing a decree of recovery as an alternative relief, in a suit for specific performance. In view of the above, finding no merit, the application merits dismissal and ordered accordingly.

For the foregoing reasons, the application for condonation of delay is dismissed. As a natural corollary, the appeal is dismissed being barred by limitation.

JANUARY 9, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no