

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3499 of 2015 (O&M)
Date of Order: 08.07.2021

Madan Mohan

..Petitioner

Versus

Kushaldeep Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. Santosh Sharma, Advocate
for the petitioner.

Mr. Ranjit Saini, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing
on account of restricted functioning of the Courts.

The plaintiff has filed this revision petition under Section 115
of the Code of Civil Procedure assailing the correctness of an order passed
by the learned first appellate Court declining to condone the delay of 151
days in filing the first appeal.

Some facts are required to be noticed.

The plaintiff filed a suit for possession of plot measuring 4650
sq. yds. comprised in Khasra No.845/2(7-14) situated in village Patti Gill,
Tehsil and District Bathinda, by way of specific performance of the
agreement to sell dated 21.11.2009. As per the agreement to sell dated
21.11.2009, the property was agreed to be sold for Rs.4 Crore, after receipt
of Rs.1,50,00,000/- as earnest money.

The defendant contested the suit and submitted that he has received a sum of Rs.67,50,000/- and not Rs.1,50,00,000/-. Along with the suit, an application for grant of an injunction was filed which was allowed by the learned trial Court vide an order dated 23.05.2012. The defendant filed an appeal before the learned first appellate court assailing the correctness of the injunction granted. On 24.07.2012, the first appellate court requisitioned the lower court record for 23.08.2012. On the next date i.e. 23.08.2021, after noticing that the lower court record has not been received, the same was again requisitioned for 19.09.2012. On 19.09.2012, once again, the record was not received and the case was adjourned to 05.11.2012. Again on 05.11.2012, the record was not received. Hence, the case was adjourned to 17.11.2012 with another direction to requisition the record. On 17.11.2012, the Court noticed that the lower court record has been received and the appeal be posted for arguments on 26.11.2012. Thereafter, on 2-3 occasions, the arguments could not be heard and therefore, on 28.01.2013, the first appellate court directed the lower court record be returned with a direction that it be summoned one day before the next date fixed. Again on various occasions, the appeal was adjourned on the ground that the lower court record has not been received.

In the meantime, the learned trial Court framed the issues on 03.05.2012 and adjourned the case for plaintiff's evidence on 14.08.2012. On 14.08.2012, 06.11.2012 and 11.02.2013, no plaintiff's witness was present and therefore, on 23.04.2013, the trial court dismissed the suit under Order 17 Rule 3 CPC.

After dismissal of the suit on 23.04.2013, the appeal against the order of injunction had become infructuous. However, neither the appellate

court nor the counsel representing the parties appeared to be in knowledge of the dismissal of the suit. The first appellate court after 23.04.2013, passed the following orders:-

*Present: Proxy counsel for petitioner.
Sh. Rajiv Gupta counsel for respondent.*

Lower Court record not received. Now to come up on 1.7.2013 for arguments. Lower Court record be summoned for that date.

*Sd/- H.S.Lekhi
ADJ(FTC) 9.5.2013*

*Present: Sh. S.N.Baghla, counsel for petitioner.
Sh. Rajiv Gupta counsel for respondent.*

Lower Court record not received. Now to come up on 13.08.2013 for arguments. Lower Court record be summoned one day before the date fixed..

*Sd/- H.S.Lekhi
ADJ(FTC) 1.7.2013*

*Present: Sh. S.N.Baghla, counsel for petitioner.
Sh. Rajiv Gupta counsel for respondent.*

Lower Court record not received. Now to come up on 03.10.2013 for arguments. Lower Court record be summoned one day before the date fixed..

*Sd/- H.S.Lekhi
ADJ(FTC) 13.08.2013*

*Present: Sh. S.N.Baghla, counsel for petitioner.
Sh. Rajiv Gupta counsel for respondent.*

Lower Court record not received. Same be again called for 20.11.2013. Lower Court record be summoned five days prior to the date of next date hearing.

*Sd/- H.S.Lekhi
ADJ(FTC) 03.10.2013*

*Present: Sh. S.N.Baghla, counsel for petitioner.
Sh. Rajiv Gupta counsel for respondent.*

At this stage, learned counsel for the appellant made a statement that appeal has been infructuous. So, does not want to proceed with the present appeal and withdraw the same. Heard. In view of the statement, this appeal is dismissed as withdrawn.

This file be consigned to the record room.

*Pronounced
03.10.2013*

*Sd/- rajwinder Kaur
Addl. District Judge
Bathinda*

On dismissal of the appeal from the order of injunction as infructuous, the plaintiff came to know of the decision of the trial court and therefore, filed an appeal along with an application seeking condonation of delay for 151 days.

Learned first appellate court, after framing the issues, has declined to condone the delay in filing the first appeal on the ground that the plaintiff has failed to show sufficient cause for condoning the delay. In the application seeking condonation of delay, the plaintiff has asserted that he and his counsel remained unaware of the proceedings before the trial Court as trial court's record has already been requisitioned and received. It has further been pleaded that on 09.10.2013, the plaintiff's counsel informed the plaintiff of the unexpected development, however, he was out of station at that time. Thereafter, he obtained the certified copy and the appeal was filed on 23.10.2013. The application was supported by an affidavit of the counsel representing the plaintiff.

Heard learned counsels for the parties at length and with their able assistance gone through the paper book.

Learned senior counsel appearing for the petitioner has contended that from the reading of the zimni orders from 09.05.2013 till 13.08.2013, respectively, it is apparent that even learned counsel representing the respondent/defendant was not aware of the dismissal of the suit under Order 17 Rule 3 CPC. He submits that on 03.10.2013, learned counsel appears to have gained knowledge of the dismissal of the suit after

the appeal was adjourned. He submits that the plaintiff had deposited the court fee at the time of filing the suit as well as on the first appeal. He submits that the learned first appellate court has taken a very narrow and conservative view of the matter while dismissing the application for condonation of delay.

On the other hand, learned counsel representing the respondent while referring to the various zimni orders passed by the trial court contends that since the plaintiff failed to produce evidence, therefore, the trial court was left with no other alternative but for to dismiss the suit under Order 17 Rule 3 CPC.

After having heard learned counsel for the parties, this Bench is of this considered view that the first appellate court has erred in refusing to condone the delay in filing the first appeal. It is apparent that the learned counsels representing both the parties were unaware of the dismissal of the suit on 23.04.2013. Learned senior counsel representing the petitioner is correct in asserting that even the counsel representing the defendant was not in the knowledge of the fact. It is also not in dispute that at one stage, the lower court record was received by the first appellate Court as noticed in the order dated 17.11.2012. The appellate Court directed the same to be sent back on 28.01.2013. Thus, the stand of the plaintiff that he and his counsel remained under the impression that the record is with the first appellate court and therefore, the trial court in the absence of the record will adjourn the case is a plausible justification. It is well settled rule of law that the courts while deciding litigation between the parties must make an effort to decide on merits rather than on technicalities. A liberal view should be adopted while deciding an application for limitation and when substantial

claims are pitied against technical considerations, the cause of substantial justice should be given preference.

Still further, the plaintiff has not derived any benefit by delaying the decision. In the present case, the suit is for possession by way of specific performance of the agreement to sell. The defendant admits the receipt of Rs.67,50,000/-.

Keeping in view the aforesaid facts, the order passed by the learned first appellate court refusing to condone the delay of 151 days is set aside. The appeal filed by the plaintiff is restored to its original number and stage. Learned first appellate court is requested to decide the appeal on merits.

Disposed of accordingly.

The parties through their counsels are directed to appeal before the learned first appellate court, on 03.08.2021.

08th July, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No