

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

**CM-4511-C-2020 in
RA-RS-26-2020 in
RSA-257 of 2020**

Date of Decision: January 14, 2021

State of Haryana and othersPetitioners
Versus
Dharambir and others Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Raman Sharma, Addl. A.G. Haryana.

FATEH DEEP SINGH, J. (Oral)

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

**CM-4511-C-2020 in
RA-RS-26-2020**

In view of the contentions made in the application and in the light of the settled position that a party should not be denied access to justice on hyper technical grounds and in the interest of justice, taking a lenient view, delay of 29 days in filing

the review application is condoned.

The application stands disposed off accordingly.

**RA-RS-26-2020 in
RSA-257 of 2020**

The present applicants State of Haryana and others then appellants had instituted a regular second appeal bearing No. RSA No. 257 of 2020 wherein they have challenged judgment and decree dated 09.10.2019 of the Court of learned District Judge, Karnal, modifying the judgment and decree of the trial Court of learned Civil Judge (Junior Division) Assandh dated 09.01.2019 in a suit titled as **Dharambir and others Vs. State of Haryana through its Collector, Karnal and others** bearing Civil Suit No. 516/16. The operative part of then impugned order is as under:-

“As an upshot of the discussion foregoing, the appeal is partly allowed and the judgment of the learned lower Court is modified to the extent that in stead of getting possession of the land, the plaintiffs-respondents are

entitled to compensation which shall be equivalent to the current Collector rate. The compensation shall be paid within six months from today failing which it shall entail the payment of interest at the rate of 12% per annum from today till payment. In case, however, the compensation is not paid by the defendants-appellants within one year from today, the plaintiffs-respondents shall be entitled to possession of the land by executing this very judgment. So long as the compensation is not paid, the trees standing on the suit land shall not be cut and removed by any party. However, after paying compensation, the defendants-appellants shall be entitled to cut and remove them. The parties are left to bear their own costs. Decree sheet be prepared accordingly. Record of the lower Court along with copy of this judgment be sent back. File be completed and be consigned after due compliance”.

This Court during preliminary hearing of the matter

through detailed order dated 16.01.2020 dismissed the appeal of the applicants in *limine* and imposed special costs of Rs.5,00,000/-, which is detailed in the order dated 16.01.2020 and need not be reproduced in toto. It is against these findings, the applicants/State of Haryana had woken up from slumber and filed the instant application after more than 05 months. In their prayer, the applicants besides seeking condonation of limitation have also sought review of the orders of this Court dated 16.01.2020 under Order 47 Rule 1 read with Section 151 CPC. The primary grounds that have been raked up is that the judgment of the trial Court and so that of first appellate Court and that of this Court went against them and that the Court have held on the basis of proven facts on record as then plaintiffs had admitted presence of *katcha* passage left during consolidation and that building of a road was of dire necessity for the co-villagers in the year 1970-71 and that demarcation order and report were incomplete and it was not ascertained as to where exist road of *gair mumkin rasta* over which the road ought to

have been constructed. It is claimed that findings are clearly based on no evidence and, therefore, needs to be reviewed.

Upon hearing Mr. Raman Sharma, Addl. A.G. Haryana and perusal of records.

There has been consecutive findings of the Courts throughout that the road was built without acquiring it under the law or paying compensation to the then plaintiffs and without getting the land beneath it demarcated. The oral and documentary evidence unrebuttedly established that 02 Kanals and 01 Marla of land of the plaintiffs was illegally encroached upon by the then defendants and the State built a road over it and even when they were afforded opportunity by the first appellate court in its judgment as is detailed in the foregoing paras that either the compensation be paid within six months from the date of the judgment with interest within one year else the plaintiffs would be entitled to possession of the land in execution and in spite of the same, no worthwhile efforts as is fairly conceded by the counsel for the applicants were made in

compliance of this judgment and even after their regular second appeal dismissed by this Court rather shows in no certain terms and establishes beyond doubt the bureaucratic stubbornness of the applicants in obeying to the orders of the Courts. It is fairly conceded and not detailed in his submissions and this Court vide order dated 16.01.2020 dismissed the regular second appeal of the applicants and in spite of adopting legal recourse by challenging the judgment of this Court if so aggrieved before next higher Forum has sought to file this review application belatedly over point which have already been adequately addressed in the findings of the Court.

In 'Ratanchand Khimchand Vs. Damji Dharsey'

1927 AIR (Bombay) 232 it was laid down that in such a situation the appropriate legal recourse for a party is to file and challenge the orders before the next superior Court in stead of filing a review application and that too belatedly. The law on review is well settled for which reliance can be placed on **'Inderchand Jain (D) through Lrs V/s Motilal (D) through**

LRs (Civil Appeal No. 4584 of 2009 decided on 21.07.2009);

'Lily Thomas etc. V/s Union of India & others' 2000 CriLJ

2433; 'Parsion Devi and others Vs. Sumitri Devi and others'

(order dated 14.10.1997 of Supreme Court of India); and '

Akhilesh Yadav Vs. Vishwanath Chaturvedi and others'

Review Petition (Civil) No. 272 of 2007 in Writ Petition (Civil)

No. 633 of 2005 decided on 13.12.2012, where uniform position is that unless there is material before on the face of the records, the Court should be slow in invoking its powers of review. Mr. Raman Sharma, Addl. A.G. Haryana could not bring forth even a single instance how there has been apparent error on the face of the records or misconstruing of the evidence when through detailed orders the Courts below had given a comprehensive judicial findings which were upheld in the findings of this Court and there is nothing to suggest non consideration of accurate evidence by this Court and how any important issue left behind by this Court should be taken up by resort to provisions of Section 103 CPC.

In the light of what has been detailed and discussed above, the present invocation is nothing but a clever ploy by the applicants to undo justice by unnecessarily delaying the implementation of the judgments which have ultimately gone against them and thus another futile effort to ensure that then the plaintiffs are kept away from the fruits of their labour and thus put them to more harassment.

In view of the same, this Court does not feel inclined to show any inclination and ensuring that such like unwanted applications should not come and unnecessarily burden this Court, the application stands dismissed with a exemplary costs of Rs.1,00,000/- which shall be paid by the officials from his pocket who has given this advice for filing of the instant application.

January 14, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

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