

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

CR-2272-2021(O&M)

Date of decision:-08.10.2021

Ramesh Kumar

...Petitioner/Defendant

Versus

Som Parkash

...Respondent/Plaintiff

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aman Bansal, Advocate
for the petitioner.

H.S. MADAAN, J.

This civil revision petition under Article 227 read with Section 151 CPC has been filed by revisionist Ramesh Kumar, aged about 61 years, resident of village Bubka, Sub Tehsil Radaur, Tehsil Jagadhri, District Yamuna Nagar against Som Parkash, resident of House No.129, Gandhi Dham, Jagadhri, Tehsil Jagadhri, District Yamuna Nagar, seeking setting aside of order dated 31.8.2021 passed by District Judge, Yamuna Nagar at Jagadhri vide which application filed by revisionist/defendant for condonation of delay of 04 months and 07 days in filing appeal against the impugned preliminary judgment and decree dated 16.3.2017 passed by Civil Judge (Sr.Divn.), Yamuna Nagar at Jagadhri, had been dismissed and consequently the appeal had also been ordered to be dismissed.

Briefly stated, the facts of the present case are that plaintiff Som Parkash had brought a suit for separate possession by way of partition of house situated at village Bubka, Tehsil Radaur, District

Yamuna Nagar, another house situated in Gandhi Dham, Jagadhri, Tehsil Jagadhri, District Yamuna Nagar and one open plot situated in village Bubka, Tehsil Radaur, District Yamuna Nagar against his real brother Ramesh Kumar. After contest that civil suit was decreed by Civil Judge (Sr.Divn.), Yamuna Nagar at Jagadhri vide judgment dated 16.3.2017 and a preliminary decree for partition was passed in favour of the plaintiff and against the defendant to the effect that plaintiff and the defendant are owners to the extent of $\frac{1}{2}$ share in the suit property mentioned at Sr.No.(A) and (B). The parties were directed to get the partition of the properties mutually, failing which, they may apply to the Court for final partition.

Feeling aggrieved by the said judgment, the defendant had preferred an appeal before learned District Judge, Yamuna Nagar at Jagadhri. The appeal was filed beyond the period of limitation i.e. after delay of 04 months and 07 days. An application under Section 5 of the Limitation Act for condonation of such delay was filed along with memorandum of appeal. Notice was given to the respondent/plaintiff, who put in appearance and offered a contest. Learned District Judge, Yamuna Nagar at Jagadhri vide impugned order came to the conclusion that sufficient reasons were not there for condonation of delay as such the application was dismissed so was the appeal filed.

Feeling aggrieved, the defendant has preferred the instant revision petition.

I have heard the learned counsel for the revisionist besides going through the record.

The purpose of enactment of that Limitation Act was that an aggrieved person should approach the Court of competent jurisdiction within a fixed time limit, otherwise the damoclean sword of litigation shall hang over the heads of the opposite party. That was done to have peace and tranquility in the society that if an aggrieved person does not approach the Court for redressal of his grievances within a fixed time limit then, he would be barred from getting the remedy after lapse of a particular period. The purpose behind enactment of that was to ensure that an aggrieved person should knock at the door of the Court without unreasonable delay. If no period of limitation is prescribed for filing a suit or appeal then the effected persons may remain apprehensive and in state of tension with regard to the litigation which may be initiated against them.

Learned District Judge, Yamuna Nagar at Jagadhir by minute and detailed analysis of the factual and legal position has come to the conclusion that defendant/appellant has failed to explain sufficient reasons for not approaching the Court by way of filing appeal within a period of limitation prescribed, rather his attitude has been found to be very non-serious and casual. Such type of person is certainly not entitled to be treated with any sympathy. Learned District Judge, Yamuna Nagar at Jagadhri has found the plea put forward by applicant/appellant that he could not contact his counsel for four months due to some unavoidable circumstances and came to know about passing of decree on 18.7.2017 only when he contacted his counsel and further that though certified copy of judgment was collected by the clerk of his counsel on 28.7.2017 but he

handed over the same to his counsel on 21.8.2017, that too on his asking and thereafter appeal was filed on 23.8.2017, to be contrary to the factual position as it emerged from the record. It has been noticed that the applicant had already received summons of the application for passing final decree on 29.6.2017, therefore, he could not say that the fact regarding decision of the suit was not in his knowledge till 18.7.2017.

Learned District Judge, Yamuna Nagat at Jagadhri has further observed that no satisfactory explanation could be given by the applicant/appellant, which may be sufficient enough to condone the delay. He has relied upon judgment **Kulwant Kaur Versus State of Punjab 1999(2) Civil Court Cases 663** by this Court observing that if delay is condoned just at the asking and in the absence of showing sufficient cause, every party aggrieved by an order of judgment will approach the Court any time. He also placed reliance upon judgment **P.K. Ramchandran Versus State of Kerla 1997(4) RCR(Civil) 242** by the Apex Court to the effect that law of limitation has to be applied with all its rigour when the statute so prescribes. The Courts have no power to extend the period of limitation on equitable grounds. Two other judgments in that regard i.e. **Ajit Singh Versus Karnail Singh and others 2000(2) PLR 381** by Single Bench of this Court and **Raghunath Versus State of Haryana and others, 1998(2) SLJ 1277** by a Division Bench of this Court have been relied upon besides some other judgments.

It is to be taken note of that the revisionist would get an opportunity of challenging the final decree, which is passed in the case, in that way, doors of contest before the Ist Appellate Court are not shut upon

him.

I find that the impugned order passed by the District Judge, Yamuna Nagar at Jagadhri is detailed and well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

08.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No