

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3126-2021(O&M)

Date of decision : 14.12.2021

Jatin and Another

.....Petitioners

Versus

Ravinder Kaushik and Others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Veena Hooda, Advocate for
Mr. Chanderhas Yadav, Advocate for the petitioners.

ALKA SARIN, J.

Taken up through physical mode.

The prayer in the present civil revision petition under Article 227 of the Constitution of India is for setting aside the impugned order dated 19.10.2021 (Annexure P-7) vide which the application for condonation of delay in filing the appeal was dismissed by the Lower Appellate Court and resultantly the appeal of the defendant-petitioners was disposed off.

The plaintiff-respondent No.1 had filed a civil suit seeking *inter-alia* a decree of declaration to the effect that the sale deed no.1715 dated 17.09.1979 is illegal, null and void and not binding upon the rights of the plaintiff and a decree of permanent injunction restraining the defendant (Suraj Bhan, since deceased through his LRs), his associates, agents and heirs from alienating the suit property or from interfering in the suit property in any manner on the basis of illegal and fraudulent sale deed no.1715 dated 17.09.1979. The present defendant-petitioners and the other defendant-

respondent Nos.2(1A to 1D) are the LR's of Suraj Bhan who died during the pendency of the civil suit and they were impleaded as his LR's.

Vide judgement and decree dated 03.04.2018 (Annexure P-1) the Trial Court decreed the civil suit to the effect that the Sale Deed No.1715 dated 17.09.1979 is illegal, null and void and not binding upon the rights of the plaintiff and defendant (now deceased through his LR's) and his legal representatives as well as agents are restrained from alienating or from interfering into the suit property in any manner on the basis of the Sale Deed No.1715 dated 17.09.1979.

On 10.09.2019 the defendant-petitioners filed an appeal (Annexure P-3) against the judgement and decree dated 03.04.2018. The appeal was accompanied by an application for condonation of delay of 495 days in filing the appeal (Annexure P-4). In the said application it was averred that the civil suit was filed against the grandfather of the defendant-petitioners who expired during the pendency of the civil suit and his LR's were impleaded. It was further averred that the father of the defendant-petitioners who was pursuing the case also expired in 2016 and the defendant-petitioners were under the impression that the proceedings stood dropped. As per the application, it was on 16.08.2019 that the defendant-petitioners learnt about the decision of the civil suit when they received summons of the execution petition and thereafter applied for a certified copy of the judgement which they obtained on 03.09.2019. In these circumstances a delay of 495 days had occurred in filing the appeal.

The plaintiff-respondent No.1 filed a reply (Annexure P-5) to the application for condonation of delay. It was contended that it had been wrongly stated by the defendant-petitioners that only their father, Sh. Prem

Parkash, was looking after the proceedings of the civil suit whereas the other legal heirs of Suraj Bhan (his other sons and daughters) had appeared in the civil suit and were actively looking after the case proceedings. It was also submitted in the reply that the defendant-petitioners along with the other LR's of Sh. Prem Parkash (his widow, sons and daughters) had appeared before the Trial Court and tendered their Power of Attorney on 01.02.2017, through their counsel and that the other LR's Suraj Bhan had also strongly contested the civil suit and that the defendant-petitioners and the defendant-respondents were fully aware about the stages of the civil suit and the decision by the Trial Court.

Vide impugned order dated 19.10.2021 (Annexure P-7) the application for condonation of delay in filing the appeal was dismissed by the Lower Appellate Court and resultantly the appeal of the defendant-petitioners was disposed off. The relevant portion of the impugned order reads as under :

“12. In view, of the aforesaid law while, deciding the application for condonation of delay in filing appeal, the Appellate Court ought not go into the merits of the case. That the Court would only see whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. Hence, this Court need not go into the merits of the appeal for, no sufficient cause has been shown by the appellant for condoning the delay in filing the appeal before this Court.

Application in hand, dismissed. Disposed of.

Civil Appeal also, stands disposed of, accordingly.

File be consigned to Record-room, after due compliance.

Ld. Trial Court's record be sent back to the Record-room, forthwith."

Learned counsel for the defendant-petitioners has contended that the Lower Appellate Court erred in dismissing the application for condonation of delay and resultantly also the appeal. According to her, the defendant-petitioners had disclosed sufficient and convincing grounds in their application for condoning the delay in filing the appeal. It was argued that a liberal approach should have been adopted while considering the application for condonation of delay.

Heard learned counsel and perused the paper-book.

It is settled law that an appeal under Section 96 CPC is against a decree. On the decision of such an appeal the Lower Appellate Court draws up a decree as laid down in Order 41 CPC. Once a decree sheet is prepared the unsuccessful party can challenge the same by filing a second appeal. However, in the present case the defendant-petitioners have chosen not to challenge the decree passed by the Lower Appellate Court on disposal of their appeal by the impugned order. Infact, the decree sheet passed by the Lower Appellate Court is not even part of the paper-book. The defendant-petitioners cannot merely challenge the order dismissing their application for condonation of delay by filing a revision petition when they have a remedy of filing a second appeal against the decree sheet drawn up. In the matter of ***Shyam Sunder Sarma vs. Pannalal Jaiswal [(2005) 1 SCC 436]***, the Supreme Court held as follows:

“9.1. In Sheodan Singh v. Daryao Kunwar rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held: (SCR pp. 308 H-309 B)

“We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”

The above view has been taken by this Court in the matter of **Haryana State Agricultural Marketing Board, Panchkula &Ors. vs. Sube Singh Panwar [CR. No.1703 of 2020 decided on 12.03.2020]**.

In view of the settled law, this revision petition is not maintainable as by the impugned order the Lower Appellate Court has confirmed the decision of the Trial Court on merits and this amounts to the first appeal being heard and finally decided on merits. A decree sheet would have been drawn up by the Lower Appellate Court. The defendant-petitioners have chosen not to challenge the decree passed by the Lower

Appellate Court though this remedy was available to them under Section 100 CPC.

In view of the reasons recorded above, I do not deem it appropriate to delve into the merits of the case as this revision petition is itself held to be not maintainable.

Revision petition is dismissed.

14.12.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO