

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 6979 of 2019 (O&M)
Date of Decision:22.02.2021

Amarjit Singh

.....Petitioner

Versus

Iqbal Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Puneet Sharma, Advocate
for respondents no.1 and 2.

None for other respondents no.3 and 4.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this revision petition is for setting aside order dated 22.08.2019, passed by the learned Additional District Judge, Gurdaspur, wherein petitioner's appeal against order dated 30.04.2018, passed by the learned Civil Judge (Jr. Division), Batala, has been dismissed solely on the ground of delay of about five months.

Respondents no.1 and 2 filed a civil suit for declaration to the effect that they are owners in possession of the land as described therein on the basis of sale deed dated 26.08.1999 and 01.11.2010 executed by Mohan Singh son of Moola Singh (father of the present petitioner). Further

declaration was sought that transfer deed dated 26.09.2002 allegedly executed by Mohan Singh in favour of the present petitioner and Amarjit Singh, is illegal, ultra vires, null and void. Transfer deed and judgement dated 21.12.2015, titled as 'The Batala Block Rural Cooperative House Construction Society Limited tec. Vs. State of Punjab etc' as well as the mortgage deed dated 05.12.2002 executed by the present petitioner in favour of respondents no.3 and 4 (defendants no.2 and 3 in the civil suit) were alleged to be illegal.

A counter claim was set up by the present petitioner. Two applications under Order 39 Rule 1 and 2 CPC were filed, by the plaintiffs as well as the present petitioner. Learned trial Court decided both the applications vide order dated 30.04.2018, Annexure P-1, whereby application filed by the present petitioner was dismissed and all the defendants in the suit were restrained from interfering in the peaceful possession of the plaintiffs i.e., respondents no.1 and 2 over the suit property and from dispossessing them during the pendency of this suit.

An appeal was preferred by the present petitioner along with application for condonation of delay. Learned Additional District Judge, Gurdaspur, has dismissed the same while observing that no cogent reason was forthcoming for condonation of delay in filing of the appeal.

Learned counsel for the petitioner submits that certified copy of order dated 30.04.2018 was prepared on 02.07.2018 and was handed over by the petitioner to his counsel on 24.07.2018 along with power of attorney and specific instructions to file the appeal against order dated 30.04.2018. The petitioner, it is further submitted, was under a *bona fide* belief that appeal against order dated 30.04.2018 stood filed, but ultimately when he sought to inquire about the fate of his appeal and specific details thereof, it was

revealed that appeal was not filed and delay of about 144 days had occurred. Once the said facts came to notice of the petitioner, necessary steps were taken to file the appeal. It is submitted that now it is the subsequent counsel who is conducting the trial. Petitioner, it is submitted should not be penalized for no fault on his part. It is thus prayed that present revision petition be allowed.

Learned counsel for respondents no.1 and 2, while opposing this petition submits that the petitioner has failed to explain delay of each day which has occurred in filing of the appeal, therefore, learned Additional District Judge, Gurdaspur, has rightly dismissed the same. It is thus prayed that the present revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

Learned Additional District Judge, Gurdaspur, has rejected the explanation put-forth by the petitioner on the ground that the same does not appeal to his conscience and did not inspire any confidence as it is not possible to believe that when certified copy of the order was delivered to the petitioner on 24.07.2018, he slept over the matter for five months. It is to be noticed that the petitioner specifically pleaded and urged that certified copy of order dated 30.04.2018, was received by him on 24.07.2018 and he had immediately instructed his counsel to file an appeal challenging the said order. He kept inquiring about the same and was put off on one pretext or other. Ultimately when he sought to obtain the details regarding the date of filing, number etc., of the appeal, it came to light that appeal had not been filed by his earlier counsel. Petitioner, immediately changed his counsel and appeal was filed along with an application for condonation of delay. The fact of subsequent counsel now representing the petitioner, could not be

controverted by the petitioner. In my considered opinion, in the given factual matrix, the petitioner should not be penalized for default which cannot be attributed to him. Reference in this regard can gainfully be made to the judgements of Hon'ble Supreme Court in **Ram Kumar Gupta and others Vs. Har Prasad and another, 2010(1) R.C.R (Civil) 3.**

Keeping in view the facts and circumstances as above, order dated 22.08.2019, passed by the learned Additional District Judge, Gurdaspur, is set aside and the matter is remanded to learned Additional District Judge, Gurdaspur, to decide the same afresh, after hearing the parties on merits in accordance with law. Parties to appear before the learned Additional District Judge, Gurdaspur, on 01.03.2021. Needless to say, learned Additional District judge, Gurdaspur, shall endeavour to decide the matter expeditiously preferably within two months from receipt of certified copy of this order. Decision regarding any interim order to be passed, needless to say, shall be taken by the learned First Appellate Court in accordance with the provisions of law.

Revision petition is accordingly disposed of.

22.02.2021
s.khan

[LISA GILL]
Judge

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