In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6512 of 2015

Date of Decision: 27.10.2022

Dharampal and Others

... Petitioner(s)

Versus

Krishan and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner(s).

Mr. Sanjay Mittal, Advocate
for the respondents.

Anil Kshetarpal, J.

1. Through this revision petition, the correctness of the order passed by the First Appellate Court while refusing to condone the delay of 8 months and 11 days in filing the first appeal has been questioned.

2. It is the case of the petitioners that after dismissal of the suit on 21.10.2013, they engaged late Sh.Gajraj Bhardwaj, Advocate, for filing the first appeal. They entrusted him with the case file as well as signed the relevant papers. However, subsequently, they came to know that Sh.Gajraj Bhardwaj, Advocate, has died before filing the appeal. Thereafter, they engaged another counsel who, on 31.05.2014, applied for a certified copy of the judgment and decree which was delivered on 01.07.2014. The First Appellate Court, after reproducing the operative part of the judgment of the trial Court, has dismissed the application on the ground that the petitioners have failed to furnish sufficient cause to condone the delay of 8 months and

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11 days. It has been observed that the petitioners have tried to cover up their negligence in delayed filing of the first appeal on the grounds which are the result of an afterthought.

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The plaintiffs' suit for grant of decree of declaration with a consequential relief of permanent injunction with respect to the immovable property including the correctness of the transfer deed executed by late Sh.Bhagmal was ordered to be dismissed. The First Appellate Court is a last Court for re-appreciation of evidence. Hence, it is an important right available to the litigant who wishes to assail the correctness of the conclusion arrived at by the trial Court. It is not in dispute that late Sh.Gajraj Bhardwaj, Advocate, was a practicing Advocate in Gurugram who died on 28.01.2014. The petitioners, while filing the application seeking condonation of delay, had supported their averments by way of an affidavit. The First Appellate Court did not grant any opportunity to the petitioners to prove the assertions. However, the First Appellate Court doubted the correctness of the explanation rendered for condoning the delay on the ground that no material to prove that late Sh.Gajraj Bhardwaj, Advocate, was engaged by the petitioners, has been produced. If the First Appellate Court was looking for evidence, then the Court should have granted petitioners an opportunity to prove that fact.

5. Moreover, the First Appellate Court has taken a myopic view of the entire matter. It has been observed that the new counsel, engaged by the petitioners, applied for certified copy of the judgment and decree on 31.05.2014, which was prepared on 04.06.2014, but its delivery was taken

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on 01.07.2014. It is not in dispute that there were summer vacations in the District Courts for the entire month of June, 2014. The certified copy of the judgment and decree was applied on 31.05.2014. There is no material on record that any intimation was given to the counsel or his Clerk that the certified copy is ready for delivery on 04.06.2014. In such circumstances, the delivery of the certified copy was taken on the opening day after summer vacations came to an end i.e. on 01.07.2014, whereas, the appeal was filed on 11.07.2014. The delay is not colossal. There is no material to prove that the petitioners have been negligent or taken undue benefit of the delay.

6. The expression "sufficient cause" is required to be given liberal interpretation, unless the Court comes to a conclusion that the party was, malafidely, delaying the filing of appeal.

7. Keeping in view the aforesaid discussion, this revision petition is allowed and the impugned order passed by the First Appellate Court on 25.05.2015 is set aside. The delay in filing the first appeal is condoned. The petitioners' first appeal is restored to its original number. Let the First Appellate Court decide the appeal on merits, preferably within a period of six months from today.

(Anil Kshetarpal)
Judge

October 27, 2022
"DK"

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

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