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

RSA No.1900 of 2022 (O&M)

Date of decision: 20.09.2022

Gurmeet Kaur and others

..... Appellants

versus

Hira Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Joginder Pal Devgan, Advocate
for the appellants.

TRIBHUVAN DAHIYA J.

CM No.6673-C of 2022

Prayer in this application is for condonation of delay of 170 days in filing the appeal.

For the reasons stated in the application, the prayer is allowed and delay of 170 days in filing the appeal is condoned.

Application stands disposed of.

RSA No.1900 of 2022 (O&M)

This is a regular second appeal filed by the appellants-defendants (hereinafter referred to as 'the defendants') against the concurrent findings of the fact recorded by the trial Court as well as the lower Appellate Court.

2. The facts of the case as pleaded are, a suit for permanent injunction restraining the defendants from encroaching and raising illegal construction over the garage of house No.3446/2, Sector 45-D,

Chandigarh, was filed by the respondent-plaintiff (hereinafter referred to as 'the plaintiff'). Mandatory injunction directing the defendants to demolish, remove the encroachment and illegal construction raised over the garage, shown in rough site plan, was also sought. The plaintiff being owner in possession of house No.3446/2, Sector 45-D, Chandigarh, is residing in the said house along with his family. As per approved plan of the Architect Department, there is a lane of eight garages on the ground floor. The plaintiff's house is situated on the second floor over the defendants' house, who reside on the first floor in house No.3446/1, Sector 45-D, Chandigarh. The defendants raised illegal construction over the garage Nos.3446/1, 3446/2 and 3445/1. The construction has been raised in an open space over the garages in front of the defendants' house over the plaintiff's garage also, which is an encroachment.

3. Upon notice, the plaintiff's ownership of the house in question was admitted by the defendants. It was also admitted that there existed a lane of eight garages on the ground floor. Raising of construction over the plaintiff's garage was denied by the defendants.

4. Issues were framed and evidence was led before the trial Court by both the parties. On perusal of the same, both the Courts have held that the defendants in the written statement have taken a plea, though that they have raised construction of a room but it is not illegal and unauthorized. It has also been admitted that no permission from the competent authority for raising the said construction of a room over the garage was taken. Defendants admitted the site plan (Exhibit P-1) to be true and correct as per the actual site. It has also been admitted that the measurement of their garage as well as the garage of the plaintiff is 8' x 4' each, whereas the measurement of his room raised on the garage is 8'x12'.

This clearly indicated that defendants have raised construction over the roof of three garages bearing house Nos.3446/2, 3446/1 and 3445/1 without taking permission from the competent authority. It has further been established on record by way of statement of PW-2, Rajesh Sambhi, Draftsman, Architectural Wing, Chandigarh Housing Board, that no one has right to raise construction over the roof of garage(s).

5. These findings of fact recorded by the Courts below cannot be found fault with, especially when the illegality has itself been admitted by the defendants.

6. No substantial question of law arises for consideration.

7. Dismissed.

8. Pending applications, if any, also stand disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

20.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No