

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Revision No. 4286 of 2022 (O&M)

Jit Singh

... Petitioner(s)

Versus

Harpal Singh and Another

... Respondent(s)

AND

2. Civil Revision No. 4287 of 2022

Jit Singh

... Petitioner(s)

Versus

Harpal Singh and Another

... Respondent(s)

DATE OF DECISION: 30.09.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sumeet Mahajan, Senior Advocate
with Mr. Saksham Mahajan, Mr. Mandeep Singh
and Ms. Rabani Attri, Advocates,
for the petitioner.

Anil Kshetarpal, J.

1. The trial Court vide orders dated 07.07.2022, in exercise of its discretion, has condoned the delay in filing an application for restoration of the suit and has also allowed the application for setting aside the decree passed in a counter claim.

2. The aforesaid two orders are the subject matter of challenge in these two revision petitions.

3. The plaintiff's suit for grant of decree of declaration based upon his possession of the immovable property was dismissed in default on 20.11.2013. The suit was filed on 13.12.2006. On 30.03.2013, the plaintiff was convicted in a criminal case under Section 302 IPC. He was immediately taken into custody. When the suit was dismissed in default, he was in custody. The defendant's counter claim was *ex parte* decreed on 24.04.2014. The plaintiff's applications, as already noticed, seeking condonation of delay of 335 days in filing an application under Order IX Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") and 171 days in filing an application under Order IX Rule 13 CPC, have been allowed.

4. Heard the learned senior counsel representing the petitioner, at length and with his able assistance, perused the paper-book.

5. The learned counsel representing the petitioner contends that the plaintiff (respondent No.1 herein) has availed parole during his conviction period, on two different occasions, but he never filed an application for restoration of the suit or for setting aside the *ex parte* decree passed in the counter-claim. He submits that the limitation for setting aside the *ex parte* decree is 30 days from the date of decree, therefore, the Court below has wrongly condoned the delay of 171 days. In support of his submission, he relies upon the judgment rendered by the Supreme Court in ***Sagufa Ahmed and Others v. Uppaer Assam Polywood Products Private Limited and Others (2021)2 SCC 317.***

6. Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act") enables the Court to extend the period of limitation if the

party establishes a sufficient cause for not approaching the Court within the prescribed time. Such sufficient cause is subject to the satisfaction of the Court. The Supreme Court has, repeatedly, held that substantial claims should not be defeated due to technical considerations. The procedural laws should aid-in ensuring justice and not hamper it. Accordingly, the Courts have always been preferring to decide the matters on merits rather than on technicalities. Although, the plaintiff did come out on parole, however, in such a short time, he is only expected to perform urgent tasks or file the appeal against his conviction. Moreover, once the plaintiff was in prison and his liberty was restricted, he cannot be said to have deliberately delayed the filing of the application for restoration of the suit or for setting aside the *ex parte* decree. The judgment passed by the Supreme Court in *Sagufa Ahmed's case (supra)* is in the context of limitation provided under the Companies Act, 2013. The Court below, in the facts of the case, has held that the limitation can be condoned only in favour of a vigilant litigant and not in favour of the persons who sleep over their rights. The aforesaid judgment is given in the peculiar facts of that case, hence, with greatest respect, not applicable to the present case.

7. Moreover, the trial Court has exercised its discretion. This Court, while exercising its powers under Article 227 of the Constitution of India, is not expected to interfere, unless such exercise of power is perverse or arbitrary.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, both the revision petitions are dismissed.

representing the petitioner has drawn the attention of this Court to the plaintiff's conduct while availing more than 20 opportunities to lead evidence.

10. Keeping in view the aforesaid facts, while dismissing both the revision petitions, the trial Court is directed to take steps for expeditious disposal of the suit of the plaintiff as well as the cross-suit/counter claim of the defendant, positively, within a period of nine months, from today.

11. The miscellaneous application(s) pending, if any, in both the revision petitions, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

September 30, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No