

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

**CM-9918-C-2014 in/and
RSA-4280-2014 (O&M)**

Decided on:-22.09.2022

Gurjant Singh and another	vs.	...Appellants
Bant Singh and another		Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gourav Mohunta, Advocate with
Ms. Yashavi Goyal, Advocate,
for the applicants/appellants.

Mr. Raman Mohinder Sharma, Advocate,
for respondent No.2.

HARKESH MANUJA J. (Oral)

CM-9918-C-2014

This is an application for seeking condonation of delay in filing the present appeal.

In the present case, the applicants-appellants have impugned the judgment and decree dated 06.10.2000 passed by the learned District Judge, Sangrur, vide which, well reasoned judgment and decree dated 22.04.1999 of learned Civil Judge (Junior Division), Sunam, has been reversed.

2. The facts of the present case are that respondent No.1-plaintiff (Bant Singh) filed a suit for specific performance qua 05 kanal 05 marla of land comprised in khasra No.247//25 min (5-5), situated within the revenue estate of village Khadial against the applicants/ defendants. The said suit was dismissed by the learned trial court vide judgment and decree dated

22.04.1999. Aggrieved against the same, respondent No.1 filed first appeal, which was allowed vide judgment and decree dated 06.10.2000 by the District Judge, Sangrur.

3. It may be pointed out here that though, the judgment and decree of learned first Appellate Court is very categoric to the extent that the appeal filed at the instance of respondent No.1-plaintiff stood allowed, however, the zimni order of even date somehow shows that the appeal stands dismissed. A copy of the said zimni order has been placed on record as Annexure A-1 at page 49 of the paper book.

4. Having waited for a period of 14 years, the applicants/defendants filed the present application along with the main appeal, impugning the judgment and decree dated 06.10.2000, passed in Civil Appeal No.80 of 17.05.1999 with the averments that throughout they remained under the impression that the first appeal filed at the instance of respondent No.1/ plaintiff was dismissed, and therefore, there was no occasion for them to file any appeal against the same. Accordingly, an application under Section 5 of the Limitation Act, 1973 has also been filed along with the appeal seeking condonation of delay in filing of the same. Along with the appeal, an application (CM-9919-C-2014) has also been filed at the instance of present applicants/appellants, invoking provisions of Order 1 Rule 10 (2) CPC for impleading Kuldeep Singh son of Chand Singh as respondent No.2, in whose favour the land in question was transferred vide transfer deed No.70 dated 08.04.2008.

5. It has been stated by the applicants/appellants in the application under Section 5 of the Limitation Act, that the correct factum of outcome of first appeal filed at the instance of respondent No.1 came to their knowledge only when a copy of the judgment and decree dated

06.10.2000 was produced by respondent No.2 herein, in another Civil Appeal No.41-A dated 29.03.2011 filed by him before the Additional District Judge, Sangrur and thereafter, without causing any further delay, the present appeal along with the application for condonation of delay was filed.

6. Notice of the application bearing CM-9918-C-2014 for condonation of delay was issued to the respondents, to which, reply dated 20.01.2019 has been filed at the instance of respondent No.2. In the reply, it has been stated that the applicants/ defendants were having complete knowledge about the judgment and decree dated 06.10.2000, whereby the first appeal was accepted in favour of respondent No.1. It has also been submitted that even an execution application was filed by respondent No.1, in pursuance to the judgment and decree dated 06.10.2000, to which, the present appellants were even put to notice and despite service, they chose not to appear and thus, were proceeded against ex-parte vide order dated 20.02.2001 passed by the learned Executing Court.

7. Having heard learned counsel for the parties and having gone through the records, I find that the reasons mentioned in the application for condonation of delay does not make out a "sufficient cause" in the facts and circumstances of the present case. The first appeal filed at the instance of respondent No.1 was allowed, vide judgment and decree dated 06.10.2000 and an execution application was filed in pursuance thereof by the decree-holder/ respondent No.1 in the year 2001 itself. The applicants/ appellants herein were even served with notice of the said execution application, however, despite service, they chose not to appear and were proceeded against ex-parte. Even a sale deed dated 17.04.2001 was registered in favour of respondent no.1, in pursuance to the decree dated

06.10.2000 and mutation was also sanctioned thereupon. Further, the suit land was even transferred in the name of respondent No.2 vide transfer deed dated 08.04.2008. Thus, by any stretch of imagination, it cannot be presumed that the applicants/appellants had no knowledge about the judgment and decree dated 06.10.2000 passed by the learned District Judge, Sangrur in favour of respondent No.1, since the day it was passed. Mere fact that the zimni order dated 06.10.2000 records the factum of dismissal of appeal, cannot come to the rescue of applicants/appellants herein, as nothing has been brought on record to show as to when the copy of zimni order dated 06.10.2000 was applied or obtained by the applicants/appellants, after the decision of the first appeal by the learned District Judge, Sangrur and as such, the tendering of judgment and decree dated 06.10.2020 by respondent No.2 in an another appeal, cannot be accepted as a “sufficient cause”, the same being mere an excuse.

8. More than that, once the applicants/appellants were put to notice in the execution proceedings filed on the basis of judgment and decree dated 06.10.2000 and they chose not to appear, they cannot be permitted to raise ignorance to the passing of the aforesaid judgment and decree for the purposes of seeking condonation of delay. Besides it, in the absence of any fraud having been pleaded or established by the applicants/ appellants on record, the settled rights accrued in favour of respondent No.1 based on registered sale deed dated 17.04.2001 as well as the rights in favour of Kuldip Singh son of Chand Singh, who sought to be impleaded by way of CM-9919-C-2014, based on transfer deed No.70 dated 08.04.2008, cannot be interfered with by condoning the inordinate delay of 13 years, 4 months and 26 days in filing the present appeal without their being any proper explanation thereto.

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9. In view of the reasoning recorded hereinabove, application seeking condonation of delay stands dismissed.

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Since the application seeking condonation of delay has been found to be devoid of merit, as a consequence thereof, the main appeal also stands dismissed.

Pending application(s), if any, shall also stand disposed of.

22.09.2022
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(HARKESH MANUJA)
JUDGE

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