

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2816 of 2017

Date of Decision: 01.12.2022

Paramjit Kaur

... Petitioner(s)

Versus

Lakhbir Singh (Now Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Baljinder Singh, Advocate
for Mr. Bikramjit Aroua, Advocate
for the petitioner(s).

Ms. Pratula Sethi, Advocate
for Mr. Rahul Bhargva, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. An *ex parte* decree for specific performance of the agreement to sell was passed on 10.01.2013. There were as many as three defendants in the suit, namely Sh.Balwinder Singh, Smt. Gurmit Kaur and Smt.Paramjit Kaur. The suit was filed on the basis of an agreement to sell dated 17.06.2003. The defendant No.1 and 2 did not contest the suit, whereas, the defendant No.3 filed the written statement and examined herself in evidence but subsequently, absented herself from the proceedings. Thus, the suit was decreed *ex parte*. The petitioner herein is the defendant No.3 in the suit. She filed a first appeal along with an application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”) to seek

condonation of delay of 315 days in filing the appeal. The First Appellate

Court, after discussing her deposition, has dismissed the application vide the impugned order dated 07.01.2017. The relevant discussion is in para 12 of the judgment passed by the First Appellate Court, which reads as under:-

"12. In support of her contentions the appellant has failed to examine any other witness except herself. Her cross-examination is very relevant. During her cross-examination she has stated that Shri S.S. Bajwa, Advocate, had filed written statement on her behalf in the Court. She has engaged the services of Shri Kapoor Singh, Advocate, on 22.11.2013 and he told her about the dates fixed by the Court. She appeared in the Court personally on 22.11.2013 in the Lower Court. There was no occasion to appear personally in the Lower court on 22.11.2013 as ex-parte decree was already passed on 10.1.2013. She do not remember that on 22.11.2013 the suit was adjourned to which date but again it is reiterated that on 22.11.2013 no civil suit against the appellant was pending. She do not remember the date when Shri Kapoor Singh told her about decision of the case. She had been contacting her counsel Shri Kapoor Singh continuously after engaging him. So, whatsoever has been stated by her that is against the facts on the file which means that she is not aware of anything and she has not given the date when she came to know about exparte decree and what is source of her information that is also not disclosed. From the bald assertions it cannot be ascertained that when the applicant came to know about the exparte decree

and from which person she came to know about the same and whether the application is within limitation from the date of her knowledge that cannot be ascertained also. Moreover, from perusal of Lower Court record it reveals that the appellant/applicant had appeared through counsel before the Lower Court and filed written statement and thereafter neither counsel nor she herself appeared before the Lower Court and was proceeded ex parte. No instructions were not pleaded by her previous counsel and no fresh notice to the applicant/appellant was required to be given by the Court. So, no ground is made out to condone the delay if approximately 315 days in filing the appeal as the applicant/appellant herself is negligent in conducting her case before the Lower Court as well as before this Appellate Court. Hence, there are no sufficient grounds to condone the delay. Therefore, this issue is decided against the applicant and in favour of the respondents.”

2. The petitioner claims the property on the basis of a sale deed executed by the defendant No.2 on 01.07.2009. Her rights are subservient to the prior agreement to sell executed in favour of the plaintiff dated 17.06.2003. The petitioner did not file any application under order IX Rule 13 CPC. She chose the remedy of filing of an appeal and that also with an application for condonation of delay of more than 315 days. She has failed to furnish any plausible explanation for the delay as noticed by the Additional District Judge in para 12 of his order.

3. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed.

(Anil Kshetarpal)
Judge

December 01, 2022
“DK”

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