

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

CR-7880-2017 (O&M)

Date of Decision : 13.02.2023

Balbir Singh and Others

....Petitioners

VERSUS

Bachint Singh (since deceased) through LRs

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S.Dandiwal, Advocate for the petitioners.

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ALKA SARIN, J. (Oral)

The present revision has been filed challenging the order dated 02.12.2016 vide which an application for condonation of delay in filing the appeal has been dismissed.

The brief facts relevant to the present lis are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-petitioners from alienating, transferring or disposing off the suit land in any manner, any specific and valuable portion by pick and choose and changing the nature of the suit land illegally, forcibly and without due course of law. Notice of the suit was issued to the defendant-petitioners. However, they did not appear before the Trial Court and were proceeded against ex-parte on 10.05.2013 and eventually ex-parte judgment and decree was passed on 01.08.2013. Thereafter, an appeal was preferred by the defendant-petitioners on 27.05.2015. It was averred in the application for condonation of delay in filing the appeal that the defendant-petitioner Balbir

Singh came to know of the decision by the Trial Court when he came to India on 16.5.2015 and he immediately approached his counsel and applied for a certified copy of the judgment and decree and the same was delivered on 19.05.2015 and hence the appeal was within time. A reply was filed by the respondent No.1(iii) stating therein that the defendant-petitioners had full knowledge of the case and were in Village Patto Hira Singh and the summons were duly served to defendant-petitioner Balbir Singh through his attorney. Munadi was also affected and the defendant-petitioners were proceeded against ex-parte. Issues were framed by the First Appellate Court. It has been noticed in the impugned order that the application was totally silent as to the source from where the petitioner-Balbir Singh learnt about the passing of the impugned judgment and decree dated 01.08.2013. However, while stepping into the witness box the attorney of the defendant-petitioner, Rajinder Singh, stated that he came to know about the passing of impugned judgment and decree through Jagtar Singh of Village Patto Hira Singh. However, the said Jagtar Singh was not examined to prove the said fact. Further, the photo-copies of the passport Mark 'A' which were produced before the Court, reveal only one entry i.e the defendant-petitioner Balbir Singh came to India on 15.05.2015 and returned on 14.06.2015. No entry for the relevant period was produced before the First Appellate Court. It has further been noticed that the power of attorney Ex.A/1 in favour of Rajinder Singh was also defective as the same was issued in one case titled as Karamjeet Singh Vs. Balbir Singh and Others and hence Rajinder Singh was not held to be the lawful attorney of the defendant-petitioner.

Learned counsel appearing on behalf of the defendant-petitioners has contended that the defendant-petitioner Balbir Singh was in Singapore at the relevant time and the plaintiff-respondents were fully aware of the fact that he was residing in Singapore. However, his service was sought to be effected at Village Patto Hira Singh.

Heard.

Interestingly, though it has been held by the First Appellate Court that the power of attorney in favour of Rajinder Singh executed by the defendant-petitioner was not pertaining to the present case, however, the present revision petition has been filed on the basis of the same power of attorney. The heading of the power of attorney reads that the same is being executed in the Court of Civil Judge (Sr. Division), Moga in the case of Karamjeet Vs. Balbir Singh and Others. It is a special power of attorney executed only qua the said case. There is no power of attorney in favour of Rajinder Singh to file the present revision petition. Further still, even on merits before the First Appellate Court the defendant-petitioners filed an application through the same Rajinder Singh who was held not to be a duly constituted attorney of the defendant-petitioner. The application for condonation of delay was also totally bereft of any details as to when the defendant-petitioners learnt about the passing of the judgment and decree dated 01.08.2013 and through whom. Even before this Court, learned counsel for the defendant-petitioners is unable to produce the relevant entries of the passport i.e. from 2012 till 16.05.2015.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

February 13, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO