

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

(105)

RSA-639-2020 (O&M)

Date of Decision : February 15, 2023

Jai Singh

.. Appellant

Versus

Ashwani and others

.. Respondents

(105-A)

CM-2166-C-2020

CM-2167-C-2020

CM-2168-C-2020 in/and

RSA-698-2020

Jai Singh

.. Appellant

Versus

Ashwani and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Kamaldip Singh Sidhu, Advocate, for the appellant
in both appeals.**

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, two Regular Second Appeals, the details of which have been given in the heading of the order, are being disposed of as both the appeals arise out of same proceedings.

CM-2166-C-2020

Present application has been filed for condonation of delay of 8 days in filing the appeal.

Keeping in view the facts mentioned in the application, the same is allowed and delay of 8 days in filing the appeal is condoned.

CM-1908-C-2020 and CM-2167-C-2020

As prayed for, the applications are allowed.

RSA-639-2020 and RSA-698-2020

Learned counsel for the appellant submits that he has instructions not to press the present appeals on merits but prays that the cost imposed by way of payment of the counsel fee to the respondents-defendants may kindly be set aside.

I have heard learned counsel for the appellant and have gone through the record with their able assistance.

Keeping in view the litigation which was initiated by the appellant against the respondents, concurrent findings have been recorded that without there being any right or the owner of the property in question, the civil suit was filed so as to drag the respondents-defendants to the Court.

Once, the said finding has already been recorded on the basis of evidence and the present appeals have also not been pressed on merits, the question which is to be seen is whether imposing of the cost to be paid by the appellant to the defendants is justified or not.

Once, the basis for which the suit was filed, was non-existent in favour of the appellant and prima facie, the litigation was due to personal dispute of the parties, the imposition of cost by the Court below cannot be treated as arbitrary, illegal or perverse or without any jurisdiction.

The litigation on the frivolous issues which is on increasing trend needs to be taken care of and the method adopted by the trial Court to send a message that in case any party initiate frivolous proceedings bringing to the other side to the Court, will be liable for cost, cannot be treated as arbitrary or illegal.

Once, the Court has exercised the discretion of imposing the cost which was permissible and was well within the jurisdiction of the Court, keeping in view the facts and circumstances of the present case, the same is not arbitrary, illegal or excessive in any manner.

Learned counsel for the appellant has placed reliance upon the judgment of the Kerala High ***Court in SA No.514 of 2002 titled as Against The Judgment and Decree vs. Byadv. Sri.K.G.Gowri Shankar Rai, decided on 28.06.2017*** to contend that the cost imposed by the lower Appellate Court was not justified.

First of all, the facts and circumstances of the case before the Kerala High Court is entirely different as compared to the present case. Further, the cost was compensatory cost before the Kerala High Court whereas, in the present case, the legal cost has been directed to be paid by the appellant, by the lower Appellate Court.

Further, before the Kerala High Court, there was no trial conducted but the costs were imposed without there being any occasion for the respondents to spend money upon the trial whereas, in the present case, not only the trial Court conducted the proceedings of the suit but the proceedings were conducted before the lower Appellate Court, only for which proceedings, the legal cost has been awarded in favour of the respondents.

The law cited is not applicable in the facts and circumstances of the present case and no benefit of the same can be extended to the appellant.

In view of the above, the present Regular Second Appeals are dismissed.

CM-1909-C-2020 and CM-2168-C-2020

As the main Regular Second Appeals are dismissed, present applications also stand dismissed.

A photocopy of this order be placed on the file of other connected case.

February 15, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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