

[125] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2236-2022 (O&M)
Date of Decision : 13.12.2023

Shamsher Singh ...Petitioner

versus

M/s Shri Balaji Grain Traders and anotherRespondents

Coram : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Ajay Gupta, Advocate for the petitioner.
Mr. Samir Rathaur, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

[1] The correctness of order passed by the first Appellate Court on 22.02.2022, while refusing to condone the delay of 219 days in filing the first appeal, is assailed by the defendant (petitioner herein). The civil suit filed for recovery of Rs.8,64,509/- was decreed on 31.10.2019 in favour of the respondents (herein) and against the petitioner.

[2] It is the case of the petitioner that he has engaged late Shri Surjeet Dhiman, Advocate, for filing the appeal in the month of November, 2019 and has also signed requisite documents, power of attorney, paid the counsel's fee and also made a payment of Rs.60,000/- towards the amount of Court fee and other miscellaneous expenses. Subsequently, in the month of March, 2020, pandemic Covid-19 spread its wings, resulting in national lock down. Due to lock down, he could not come to Kaithal and enquire about the status of his appeal. In the first week of June, 2020, he received notice for appearance in the execution petition and then visited the Court Complex, Kaithal. During

Dhiman, Advocate, unfortunately expired 2-3 months ago. Thereafter, the petitioner engaged Shri Ramesh Gupta, Advocate, who appeared on his behalf in the execution petition. He also engaged Shri R.D. Sharma, Advocate, for filing the appeal. The respondents opposed the application by contending that due to negligence of the petitioner, there was no sufficient cause to condone the delay.

[3] Learned first Appellate Court has dismissed the application.

[4] Heard learned counsel representing the parties at length and with their able assistance, perused the paper book.

[5] Learned counsel representing the petitioner contends that the period from 15.03.2020 to 28.02.2022 is required to be excluded as per the orders passed by the Hon'ble Supreme Court in the wake of Covid-19. He submits that the petitioner should be given an opportunity to challenge the judgment of the learned trial Court before the first Appellate Court. He submits that the first Appellate Court has taken a very narrow view, while dismissing the application for condonation of delay. On the other hand, learned counsel representing the respondents submits that the petitioner received notice of execution petition on 10.02.2020 and therefore he was required to contact his counsel immediately.

[6] This Court has considered the submissions.

[7] The impact of Covid-19 could be seen from the beginning of 2020. Thereafter, it spread like a wild fire. In such circumstances, the explanation furnished by the petitioner is plausible. In this case, the *bona*

fide of the petitioner is required to be examined. As per the facts and circumstances prevailing at the relevant time, it is a positive case of the petitioner that he had engaged late Shri Surjeet Dhiman, Advocate, for filing an appeal at an appropriate time, however, Shri Surjeet Dhiman, Advocate, died on 24.02.2020. In such situations, the Court was expected to take a pragmatic and justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

[8] Learned counsel representing the respondents submits that the petitioner has already sold his 04 kanal land vide registered sale deed dated 29.05.2020. However, this fact itself is not sufficient to conclude that the petitioner had mala fide intentions in filing the appeal after the delay of 219 days.

[9] Keeping in view the aforesaid discussion, the revision petition is *allowed* and the impugned order passed on 22.02.2022 is set aside. The first appeal is restored to its original number.

[10] The parties through their counsel are directed to appear before the first Appellate Court on 08.01.2024.

(ANIL KSHETARPAL)
JUDGE

13.12.2023
'Rajneesh'

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